

Exhibit 9-3

 ORIGINAL

268

UNITED STATES DISTRICT COURT NEW YORK
FOR THE EASTERN DISTRICT OF NEW YORK

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MARTIN TANKLEFF,

Plaintiff,

-against-

THE COUNTY OF SUFFOLK, K. JAMES MCCREADY,
NORMAN REIN, CHARLES KOSCIUK, ROBERT DOYLE,
JOHN McLELHONE, JOHN DOE POLICE OFFICERS
#1-10, RICHARD ROE SUFFOLK COUNTY EMPLOYEES
#1-10,

Defendants.

-----X

666 Old Country Road
Garden City, New York

December 12, 2012
11:30 a.m.

CONTINUED EXAMINATION BEFORE TRIAL of K.
JAMES MCCREADY, one of the Defendants
herein, taken by the Plaintiff, pursuant to
Federal Rules of Civil Procedure and Notice,
held at the above-mentioned time and place,
before Dolly Fevola, Notary Public of the
State of New York.

A P P E A R A N C E S :

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SUFFOLK COUNTY DEPARTMENT OF LAW
Attorneys for the Defendants
H. Lee Dennison Building
Hauppauge, New York
BY: RICHARD T. DUNNE, ESQ.

ALSO PRESENT:

KATHY PASCHAL, Videographer

MARTIN TANKLEFF, Plaintiff

ROBERT DOYLE

NORMAN REIN

STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED, by and among counsel for the respective parties hereto, that the filing, sealing and certification of the within deposition shall be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to form of the question, shall be reserved to the time of the trial;

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed before any Notary Public with the same force and effect as if signed and sworn to before the Court.

* * *

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2 THE VIDEOGRAPHER: This is Disk
3 6 of the continuation of the
4 deposition of K. James McCready in
5 the matter of Martin Tankleff versus
6 the County of Suffolk and the United
7 States District Court for the
8 Eastern District of New York.

9 This deposition is being held
10 at Barket, Marion, Epstein and
11 Kearon at 666 Old Country Road,
12 Garden City, New York on December
13 the 12, 2012 at approximately 11:33
14 a.m.

15 My name is Kathy Paschal, the
16 videographer from Pro Video
17 Productions located in Nesconset,
18 New York, and I attest to record
19 these proceedings fairly and
20 accurately.

21 The court reporter today is
22 Dolly Fevola, an associate with
23 Fevola Reporting & Transcription
24 Inc., located in Smithtown, New
25 York.

Will counsel please introduce yourselves and state the parties you represent.

MR. BARKET: I'm Bruce Barket for Martin Tankleff.

MR. POLLACK: Barry Pollack on behalf of Martin Tankleff.

MS. FREUDENPERGER: Emma Freudenperger for Martin Tankleff.

MR. DUNNE: Richard T. Dunne on behalf of the County of Suffolk and the individually named detectives.

THE VIDEOGRAPHER: Will the court reporter please swear in the witness.

MR. BARKET: This is a continuation.

THE VIDEOGRAPHER: Yes, alright. He's already sworn in. Please proceed.

CONTINUED EXAMINATION BY

MR. BARKET:

MR. BARKET: Thank you. Good morning, Mr. McCready.

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K. J. McCready 273

THE WITNESS: Morning.

Q I want to ask some questions,
if I can, about kind of the details of the
interrogation.

Is there a difference in your
mind between an interview and an
interrogation or are they different?

A Well, usually an interview
rolls into an interrogation depending on
what happens.

Q So at some point in time, was
Martin Tankleff being interrogated by you
and Detective Rein?

A Yes.

Q Okay. Were you taking notes
during that process?

A No. Norman was taking the
notes.

Q Okay. Did you use his notes
then to prepare the supplemental report?

A Did I what?

Q Use his notes to prepare the
supplemental report?

A Yes.

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K. J. McCready 274

Q If we can take a look at the notes that we marked yesterday, do you have them right here? I think they're Plaintiff's 77. No.

A Seventy-nine.

Q Seventy-nine, sorry.

A Yes.

Q These are your notes, you said?

A Yes.

Q I want to refer you to one of the pages and I guess somebody labeled it. It says A15 at the bottom. Take a look at that.

A (Complying.)

Q That seems to contain information that you all say was acquired from Marty during this interview/interrogation; am I right about that?

A Yes, that says started at 9:40. That's when we got to the headquarters.

Q Right. Well, it has in there, security, paranoid, save the turkey?

A I'm sorry, what?

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K. J. McCready

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2

Q I'm just reading from the page.

3

A Which page?

4

Q A15.

5

A Oh, okay.

6

Q This looks like information
7 that you all say you acquired from Marty
8 during the period of time he was being
9 interrogated at the headquarters, right?

10

A Yes, yes.

11

Q I've used the word precinct,
12 it's actually not a precinct, right?

13

A No.

14

Q The homicide squad is in police
15 headquarters in Yaphank?

16

A Yes.

17

Q If you turn to A16, it has,
18 sees blood, father sleeps, mother other
19 side, poker game, information about the
20 will. This is all information that was
21 acquired during the course of this
22 interrogation, yes?

23

A Yes. Well, yes, during, yes.

24

Q Okay. So you did take some
25 notes about it?

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K. J. McCready 276

A Yes.

Q Or these are notes --

A No, you're correct.

Q -- or these notes notes that
you wrote up afterwards to kind of write
down what you did as quickly as you could?

A No, this is during when we were
interviewing him.

Q Okay. I don't see any notes
here from you concerning what happened once
you began to confront Marty, as we've
described it, with what you all thought were
inconsistencies.

A That's right. That's Norman
kept those notes.

Q Was that a decision that you
guys made to do it that way?

A I don't know how we arrived at
it, actually. I think it was probably
because I was doing most of the questioning.
I'm not a hundred percent on that.

Q Okay. But at some point in
time as you began to confront Marty, you
stopped writing anything down?

1 K. J. McCready 277

2 A Pardon me?

3 Q You stopped writing down
4 things?

5 A Yeah, until the conversation we
6 had with Shari on the phone.

7 Q Well, you wrote that down but
8 that was sometime later, right?

9 A Right.

10 Q Okay. By the way, that
11 conversation you wanted to record?

12 A Pardon me?

13 Q That conversation you all
14 wanted to record?

15 A Yes.

16 Q And you actually tried to but
17 Shari wouldn't let you?

18 A That's correct.

19 Q Okay. If I can refer to Rein's
20 notes, I take it you used those to prepare
21 your supplemental report?

22 A Yes.

23 Q So those are actually, I think,
24 71 -- 60, 61 and 62. I want to refer you to
25 a part of that.

1 K. J. McCready 278

2 Did I understand that Mr. Rein
3 or then Detective Rein was some kind of --
4 Excuse me one second -- then Detective Rein
5 was some kind or had been an emergency
6 medical technician of some sort?

7 A Yes.

8 Q What was he?

9 A I don't know to be honest with
10 you. I know he was involved in the fire
11 department, I believe.

12 Q So he had some emergency
13 medical training?

14 A I guess.

15 Q So he would have been familiar
16 with language that's used by medical
17 personnel?

18 A Probably.

19 Q Marty, of course, had no such
20 training, right, that we're aware of?

21 A I have no idea.

22 Q You're not aware of any
23 training that the 17-year-old had, right?

24 A No.

25 Q Now, you guys claim that you

1 K. J. McCready 279

2 wrote these notes up contemporaneous with
3 when Marty was speaking to you, right?

4 A Yes.

5 Q And obviously Detective Rein
6 testified that he tried to write down what
7 Marty was saying?

8 A Yes.

9 Q And that it was important to
10 use Marty's words, not the words of what was
11 in your mind, but to use what was coming out
12 of his mouth, right?

13 A Right.

14 Q I want to show you what's been
15 marked as Plaintiff's Exhibit 61 and I want
16 to refer you to the bottom of the page
17 there, and if you recall, yesterday we had
18 some discussion about whether or not Marty
19 told you about what the 911 operator told
20 him or whether or not you listened to the
21 tape and then wrote down what the 911
22 operator said. You remember those
23 questions? You remember talking about that
24 yesterday?

25 A You got me confused here.

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K. J. McCready

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Q Sorry, that was a confusing question. Withdrawn.

4

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7

Do you remember yesterday we spoke about whether or not Marty told you that the operator told him to put pressure on his father's neck wound?

8

A Yes.

9

10

11

12

Q Okay. And you said that you knew about those instructions, not because you had listened to the tape but because that's what Marty said to you, right?

13

A Yes.

14

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16

17

Q Okay. And Marty told you that -- I guess, according to you -- during the course of this interview where Rein was writing notes, yes?

18

A Yes.

19

20

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22

23

Q And yesterday I showed you your notes and I said, show me where Marty said, put the pressure on the wound, and you said, well, I just did not write it down, but he said it; do you remember that?

24

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A I didn't write it down. Norman wrote it down.

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K. J. McCready 281

Q What did Norman write down?

Can you read that about what he wrote down?

A Instructions is abbreviated.

Instruction 911 operator, put father on floor, et cetera. Compress wound with towel, elevate feet.

Q So your testimony is that

Martin Tankleff used the word "compress wound"?

A Yeah.

Q That's the word he used --

A Yes.

Q -- when he was talking to you?

A Yes.

Q That's not Detective Rein's

language, something that he wrote down afterwards being an EMT, that's something that the 17-year-old high school student said?

MR. DUNNE: I object to the form of that. It's calling for someone's state of mind but if you know.

A He's repeating what the 911

1 K. J. McCready 282

2 operator told hem, as far as I know. I
3 don't know what the 911 operator told him
4 exactly. I have a good idea. I don't
5 recall all the exact words. I haven't heard
6 that tape in 25 years or whatever.

7 Q But at the time you had written
8 your supplemental report on the 14th of
9 September, you actually had heard the tape
10 and relatively close in time to when you
11 wrote the report, right?

12 A I don't know when I heard that
13 tape. I'm not sure if I heard that tape
14 until we got to the trial.

15 Q Well, yesterday you told us
16 that you heard it before the 14th, now
17 you're saying you don't know?

18 A I don't remember saying that
19 yesterday.

20 Q Well, it's a good thing we have
21 a court reporter. One of our memory is bad
22 but that's all right.

23 At this point, you're saying
24 that you don't think you heard the 911 tape
25 until the trial?

1 K. J. McCready 283

2 A Yeah. Or the hearing or at
3 some point in time.

4 Q As a homicide detective, you
5 would not have listened to the 911 tape
6 shortly after the crime happened?

7 A Not necessarily, no.

8 Q Do you remember one way or the
9 other?

10 A I don't recall right now.

11 Q Okay. Thank you.

12 A Okay.

13 Q You have your supplemental
14 report there?

15 A Yes.

16 Q I think it's 69, actually.
17 Now, as you're interviewing Martin and he's
18 telling you what took place, is there a
19 reason why you, when he tells you something,
20 you don't simply accept what he says and you
21 challenge him on it or ask him questions on
22 it over and over again?

23 A I think you're going to have to
24 rephrase that question.

25 Q Sure. Martin had told you all

1 K. J. McCready 284

2 several times what took place the morning
3 that he woke up, right?

4 A Yes.

5 Q And you asked him to repeat it
6 several times?

7 A Yes.

8 Q And in the interview process
9 you asked him to go over and over it a
10 couple of different times, right?

11 A Yes. Yes. Some things, yes.

12 Q Right. And you actually had
13 him give a demonstration at certain points?

14 A Yes.

15 Q Is there a reason why you asked
16 him to repeat the same events over and over
17 again?

18 A With regard to demonstration,
19 it was because it seemed impossible to me
20 that he didn't get blood on that sweatshirt
21 based on what he was telling us. And then
22 the ridiculous attempt he made -- first he
23 pulled his sleeves up and then he pulled his
24 shoulders down. It was ridiculous what he
25 was demonstrating to us.

1 K. J. McCready 285

2 Q Well, that was probably the
3 fourth or fifth time you had asked him what
4 happened after the 911 operator call. What
5 I'm asking you is, why are you asking him to
6 go over the same material again and again?
7 Is it that you did not believe him?

8 A No, I didn't believe him.

9 Q Is that why you kept asking
10 questions?

11 A Certainly.

12 Q So as a homicide detective
13 you're not required to simply accept what
14 somebody says to you. If you don't believe
15 them, you are allowed to inquire further and
16 ask them more questions about it, obviously,
17 right?

18 A Sure.

19 Q Okay. Let's go back a second
20 to your supplemental report and if we can go
21 to Page 3, please.

22 A (Complying.)

23 Q Down at the bottom one, two,
24 three, four lines from the bottom where it
25 says, he was instructed by the 911 operator.

1 K. J. McCready 286

2 A Yes.

3 Q Well, you wrote down he was
4 instructed by the 911 operator to get a
5 clean towel, apply pressure to the wound
6 area, to lay his father down and elevate his
7 feet?

8 A Yes.

9 Q Well, the 911 operator -- and
10 we can play the tape if you'd like -- but
11 the 911 operator says put pressure on the
12 wound. The word that she uses is pressure;
13 do you know that?

14 A No, I don't know that.

15 Q Why didn't you write down
16 compress the wound the way that Rein did?

17 A I don't know. I mean some -- a
18 lot of this is the sum and substance of what
19 he said. I don't know exactly why but
20 that's what he said.

21 Q You're certain that the
22 supplemental report is a product of what
23 Marty said, not information that you
24 gathered later on?

25 A Right.

1 K. J. McCready 287

2 Q You discussed with Marty the
3 terms of his parents Will; is that right or
4 his dad's Will?

5 A At some point in time, yes. I
6 don't remember that.

7 Q Take a look at Page 8 --

8 A Page 8.

9 Q -- of your supplemental report.

10 A Yes.

11 Q It says, we had discussions
12 about money.

13 A Yes.

14 Q And then it says, he knew he
15 was the primary beneficiary if they would
16 both die.

17 A Yes.

18 Q Didn't he also say something
19 along the lines that his sister would only
20 get a small amount of money?

21 A Yes.

22 Q Did he tell you that he
23 actually wasn't going to be the beneficiary
24 until he turned 25, that the money would be
25 put in trust until then?

1 K. J. McCready 288

2 A I don't remember him telling me
3 that at all.

4 Q Well, he clearly --

5 A I've heard that since then, but
6 I have no recollection of him saying it that
7 morning.

8 Q He clearly had some
9 understanding of his father's estate and the
10 Will and what would happen, right?

11 A Yes.

12 Q You're saying he just didn't
13 tell you the part about him not collecting
14 the money until he is 25?

15 A I don't remember him saying
16 that. Possibly he did, but I don't remember
17 him saying that.

18 Q Okay. You obviously did not
19 write down every single thing that Martin
20 said, correct?

21 A Correct.

22 Q This is, as you put it, is the
23 sum and substance of what he said. You did
24 the best you could but you all elected not
25 to record this conversation so we don't have

1 K. J. McCready 289

2 a verbatim transcript of what was said,
3 true?

4 A That's correct.

5 MR. DUNNE: I'll object to the
6 form of that question.

7 A I told you before that was not
8 our procedure at the time. Had it been our
9 procedure, we would have done that.

10 Q All right. Now, as far as the
11 ruse goes, the thing with his father, we
12 talked about that a little bit yesterday but
13 regardless of what Marty or an innocent
14 person could or would have done in any
15 circumstances, it worked here; didn't it?
16 The ruse worked?

17 A Yes.

18 Q You, in essence, got Marty to
19 begin to speak to you about the crime in
20 your view, right?

21 A Yes.

22 Q And it began with him wondering
23 out loud whether or not he could have
24 blacked out, whether or not he could have
25 been possessed, literally whether or not he

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K. J. McCready

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could have done it without remembering,

3

correct?

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A Yes.

5

Q I don't mean this in a physical

6

sense but mentally, you beat him, you broke

7

him?

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MR. DUNNE: I'm going to object

9

to the form of the question.

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A I don't like the word "beat."

11

Q But but --

12

A No, we did our job and we did

13

it properly.

14

Q We talked about this for a

15

while yesterday. Part of your job, in your

16

view --

17

A Is to try to get him to roll

18

over, yes.

19

Q And you did it here, right?

20

A Yes.

21

Q You literally convinced him

22

that it was in his best interest to tell you

23

about the crime --

24

A Yes.

25

Q -- rather than continue to

K. J. McCready

291

1 deny?

2 A Yes.

3 Q Right?

4 A Yes.

5 Q And then he began to give you
6 details about the crime, right?

7 A Yes.

8 Q Now, you've had instances,
9 haven't you, where individuals have
10 minimized their role in a homicide, right?

11 A Much like Marty tried to do
12 many times. He kept inflecting things and
13 trying to minimize things. That's the
14 normal occurrence in any --

15 Q We'll talk about what Marty did
16 in a second, but just generally speaking,
17 you've had instances where people have
18 offered false defense claims, right? Yes, I
19 killed him but I only killed him because I
20 thought he was going to kill me, right?

21 A Yes.

22 Q People have offered up false
23 explanations of being under some kind of
24 mental strain or stress, right?

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K. J. McCready 292

A Yes.

Q People have offered up all kinds of "it was an accident" is probably something that frequently happens, right?

A Yes.

Q "I shot him but I didn't mean to shoot him," something along those lines?

A Yes.

Q So you have all kinds of instances where people minimize their involvement in a crime and the minimization offers some kind of defense; self defense, accident, mistake, things like that, right?

A Yes.

Q In Marty's particular case, he told you, according to you, that he planned to commit the murder, right?

A Yes.

Q He told you, according to you, that he set his alarm clock early so he would get up to commit the murder, correct?

A Yes.

Q He told you that he selected a weapon to commit the murder, correct?

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K. J. McCready

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A Yes.

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Q He said that he thought about

4

it ahead of time and decided to kill both of

5

his parents, right, according to you?

6

A Yes.

7

Q According to you, that he

8

looked around and surveyed the house and saw

9

where his parents were and then decided to

10

go forward with his plan, right?

11

A Yes.

12

Q And according to you Marty

13

selected his mother to be the first victim,

14

correct?

15

A According to Marty.

16

Q And according to Marty he

17

attacked his mother and beat her with a

18

barbell and cut her throat and stabbed her a

19

number of times, right?

20

A Yes.

21

Q And then after he murdered his

22

mother or attacked his mother -- naked by

23

the way -- according to him he said he did

24

this naked because he didn't want to get

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blood on his clothing, right?

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K. J. McCready 294

A Yes.

Q According to you Marty says he walked down the hallway with the intent to kill his father, right?

A Yes.

Q And when he got down to where his father was, he hid the barbell and the knife behind his back, right?

A Yes.

Q And according to you he went around the back of his father and beat his father and slashed his neck, correct?

A Yes.

Q And then tried to cover it up by calling 911 and pretending to be panicked and pretending to offer his father first aid, right?

A Yeah.

Q So what defense did Marty build into that?

A What defense did he --

Q What was the minimization? What was the self defense? Where was the accident? Where was the mistake?

1 K. J. McCready 295

2 A What he did was when he ran
3 around the neighborhood screaming and
4 yelling about his parents being murdered and
5 trying to convince everybody like he's the
6 poor innocent little boy here, which he was
7 not and he's not, that's how he is
8 minimizing it.

9 All his acting and his role of
10 being grieved and cried out in five minutes
11 or whatever. He didn't even cry when he was
12 convicted. There's a picture of him in the
13 newspaper, front page of Newsday, where he
14 was, oh, looking like this, he didn't have a
15 tear coming out of his eye.

16 Q You're not suggesting that he
17 was not upset that he got convicted of
18 killing off his parents and that he was
19 going to spend the rest of his life in
20 prison, are you?

21 A Let me tell you something, if I
22 were wrongly convicted, I would be balling
23 my eyes out.

24 Q I mean, I saw an interview of
25 you someplace where you said that you cry.

K. J. McCready

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2 A I do.

3 Q Some people cry, right?

4 A Yes.

5 Q Some people don't. You're not
6 saying that Marty when he got convicted
7 wasn't upset, right? When he got convicted,
8 you're not suggesting he wasn't upset, are
9 you?

10 A I don't know if he was upset or
11 what he was, but to me he was a big act in
12 the courtroom there when he did that with
13 that face.

14 Q It was an act, okay.

15 In any event, let me get back
16 to the --

17 A Go ahead.

18 Q The minimization that I thought
19 we were talking about is what somebody does
20 when they offer up the confession. They
21 just don't come out and say yeah, I did it.
22 They offer the confession along with an
23 excuse or defense?

24 A Well, that's when he starts to
25 say, could I have blacked out, could I have

K. J. McCready

297

1
2 been possessed.

3 Q But after that, according to
4 you, he says well, no, I remember it and
5 here's what happened, right?

6 A Yes.

7 Q So as he's telling you,
8 according to you, the details of what took
9 place, he's not offering any minimization.
10 He's not offering any defense. He's telling
11 you, according to you, I thought about it, I
12 decided to do it and I did it?

13 A Yes.

14 Q And here's how I did it,
15 according to you.

16 A Yes.

17 Q And there is not one single
18 thing in there in the confession part of
19 this that could be used as a defense; is
20 there?

21 A No.

22 Q So you literally broke him
23 mentally. You got him to spill the whole
24 thing without any defense, any excuse, any
25 nonsense?

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K. J. McCready 298

A Yes.

Q Right?

A However, what he told us was not necessarily all true. We don't know that, that's why we go back and try to corroborate the confession later on. We don't -- I've had many confessions where they never tell you a hundred percent of the truth and then you go back and find out well, this isn't truth.

The guy who rapes and kills a girl, whatever, he admits to raping her vaginally but then he won't tell you about that he did her anally also. There's all sorts of things that happen like that.

Q Right, well, here Marty doesn't seem to have -- if you're account is correct -- Marty doesn't have seemed to have held back at all; has he?

A We didn't finish the confession, did we? We were put on notice so there's a whole bunch of other questions we would have liked to have asked him.

MR. DUNNE: Objection.

1 K. J. McCready 299

2 Q There was nothing stopping you
3 from asking the questions as he was telling
4 the story; was there?

5 A No, but as we were writing it
6 down, as he went over it again, as we asked
7 him questions, I was writing it down.

8 Q We just talked about the fact
9 that if somebody is telling you something
10 and you don't think it's true that you're
11 free to challenge them on it and tell them
12 it's nonsense and so forth?

13 A Yes.

14 Q So Marty's oral statements
15 began around five of 12:00, correct?

16 A Yes.

17 Q You were not put on notice,
18 according to you, until sometime after
19 1 o'clock? I think 1:22.

20 A 1:22.

21 Q So that gave you an hour and
22 25 minutes or so to challenge Marty's
23 account if you didn't believe it, right?

24 A Yes.

25 Q And at any point when he's

1 K. J. McCready 300

2 telling you that he decided to kill his
3 parents the night before, that he went and
4 got a barbell, that he got a kitchen knife,
5 that he beat and stabbed his father and
6 mother, at any point did you say to him,
7 hey, Marty, I don't believe that. That's
8 not true. That could not have happened?

9 A Not that I recall.

10 Q And just to go through this in
11 some detail, it may take a minute or two,
12 but it's probably worth doing.

13 Did Marty say to you that he
14 wanted a lawyer during the course of this?

15 A No.

16 Q Did Marty say, I want to call a
17 lawyer. I want to talk to my Uncle Mike?

18 A No.

19 Q Did you tell Marty that if he
20 wants to speak to a lawyer that he's a
21 criminal?

22 A That what?

23 Q That he's a criminal. That if
24 he wants a lawyer that means he's a
25 criminal?

1 K. J. McCready 301

2 A I advised him of his rights and
3 had him sign a rights card.

4 Q Did you tell Marty that if he
5 wanted to speak to a lawyer he's a criminal?

6 A No, I read him his rights. He
7 knew what his rights where.

8 Q You said you read him his
9 rights at some point after you did this
10 ruse, correct?

11 A Yes.

12 Q Marty says that didn't happen?

13 A I don't care what he said.
14 That's his handwriting on the rights card.
15 He signed it.

16 Q Is there a time on the rights
17 card?

18 A No. That was my fault.

19 Q Is there a time anywhere, a
20 stamp, a notation of when it was done?

21 A Yes, it's in Detective Rein's
22 notes.

23 Q Right, but those aren't stamped
24 either, right?

25 A Stamped?

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K. J. McCready 302

Q Stamped. We don't have any contemporaneous note that we can say you turned your notes in. Here's the notes I had that day. We don't know other than you telling us.

I'm not saying we should believe you or we shouldn't but other than you telling us we don't know when the rights card was signed; do we?

A You don't know. I know it. Detective Rein knows it. It was written that day.

Q But when you're preparing reports you know that this is all going to court and it's subject to challenge by attorneys and by courts and by prosecutors and defense lawyers, right?

A Certainly.

Q So at the end of the day what happened in that interview room, we have two choices. We can believe you, right?

A Yes.

Q And Detective Rein?

A Yes.

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K. J. McCready 303

Q Or we can believe Marty; is that fair?

A You believe who you want to believe and I'll believe who I want to believe.

Q I understand but everybody gets to make that choice; don't they?

A Yes, they do.

Q And that choice is something that you decided to do by setting this up in a way where it was going to be your word against the suspect's word, right?

A I didn't set it up. That's the way it worked out.

Q You didn't bring a court stenographer in to record what was being said; did you?

A No.

Q We said this several times. You didn't record this, correct?

A No.

Q Now, Marty says to us, and I think to courts and so forth when he's testified, that what happened was when you

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K. J. McCready 304

all asked him for the details he said, "I don't know. I didn't do this." Is that true?

A No, he's a liar.

Q Again, I understand your view and other people can have different views. Rather than --

A You asked me if it was true; I said no, he's a liar.

Q Okay. Well, what I was going to suggest to you is that the part no, it's not true is probably a sufficient answer to my question. If you want to refer to Marty as a liar, you can but really --

A He didn't tell the truth. He didn't tell the truth in the court.

Q Okay. So we could go back and forth, right? I mean people could say that you're lying and you can say that Marty is lying. I don't want to get into that kind of name calling. I want to ask questions about what happened, okay?

A I understand. Let me put it to you like this then. There are 12 jurors in

1 K. J. McCready 305

2 that courtroom who listened to every word
3 that I said, that Detective Rein said, all
4 the other witnesses said, and even what he
5 said when he took the stand with Mr.
6 Gottlieb, and they convicted him of murder,
7 alright.

8 Q Alright. And we can go back
9 and forth because then four judges listened
10 to the whole thing again and decided that he
11 deserved a new trial. The attorney
12 general's office looked at the whole thing
13 again and decided not to retry.

14 I understand that the 12 jurors
15 believed you, but you understand, don't you,
16 that other people get to make an independent
17 judgement of this?

18 A My understanding is that
19 nobody's saying that he's innocent, they
20 just said give him a new trial. Nobody said
21 he didn't do it. They just said give him a
22 new trial.

23 MR. DUNNE: I got the
24 clarification. It's here on record
25 here. Just, you know --

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K. J. McCready 306

Q You understand people get to make their own judgement about who is telling the truth here --

A Of course.

Q -- so you can have your own view; other people are going to have theirs. What I want to ask you is what actually happened and then you're saying that something didn't happen, just tell me that.

Marty says that -- right at the beginning here on Page 11 -- Marty says that when you asked him what happened his response was, "I don't know. I don't remember doing this."

A That's what Marty says.

Q And you're saying that's not true; is that right?

A That's right.

Q Then when you asked him, how did he do it, who did he kill first, is it true that Marty said, "I don't know. I don't have any memory of this. I don't know what took place." Did he say that?

A No.

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K. J. McCready 307

Q He says that you told him,
look, we know you killed your mother first,
just say that.

A How would I know that?

Q Actually, we'll come back to
that in a minute but for right now what I
want to just do is ask you, did you tell
him, "we know you killed your mother first,
just tell us that's what you did"?

A No.

Q He says that when you asked him
what weapons were used that you told him --
excuse me. That when you asked him what
weapons were used he said, "I don't know. I
didn't do this. I don't have any memory of
it." Did he say that?

A No.

Q He says that when you were
asking him about this you told him, "we know
that you used the barbells in your room and
just tell us that." Did you say that to
him?

A No.

Q He says that you told him that

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K. J. McCready 308

you knew that the watermelon knife was used.
Did you tell him that?

A No.

Q He says that all of the details
in here, all of the details in here were
more than suggested, were literally told to
him by you and Detective Rein and that he
simply adopted and said, "I guess so. If
that's what you want to hear, I guess that's
what I did."

A No.

Q That did not happen?

A No.

Q You're certain of that?

A Yes.

Q We talked before about the
layout of the house, right?

A Yes.

Q Now, you know how big the house
is, right?

A Yeah.

Q And if we can take a look at
what was marked as Plaintiff's Exhibit 81,
we knew that the murders occurred at some

1 K. J. McCready 309

2 point after say 3 o'clock and before 6:11 or
3 so, correct?

4 A Yes.

5 Q And you know that the father
6 was found at the other end of a very long
7 ranch-style house, right?

8 A Yes.

9 Q That Marty's room is literally
10 across the hall from his mother, correct?

11 A Yes.

12 Q So that if Marty woke up in the
13 morning and decided to kill his parents, he
14 would have seen his mom first, right?

15 A Yes.

16 Q And that's something you knew
17 when you were doing this interrogation,
18 right?

19 A Yes.

20 Q Okay. Thanks. By the way, did
21 you participate in a sound test in the
22 house?

23 A Yes.

24 Q Tell us about that if you
25 would.

1 K. J. McCready 310

2 A I had one detective stood at
3 one end down in the office area and I stood
4 in the other and we both yelled at the top
5 of our lungs and couldn't hear each other.

6 Q Didn't one of you stand in the
7 master bedroom and one of you stand in
8 Marty's room and do the same thing?

9 A Yes.

10 Q And you couldn't hear there
11 either, could you?

12 A Yes, you could.

13 Q You could?

14 A Yeah.

15 Q Your testimony is that you
16 actually could hear somebody yelling from
17 the master bedroom and Marty's room?

18 A Yes.

19 Q Not that you couldn't hear?

20 A No, we could hear.

21 Q Was there testimony at the
22 trial from experts, if you know, that did
23 literally a sound test between those two
24 rooms?

25 A I don't know. I'm not familiar

K. J. McCready

311

with that.

Q Okay. Let me ask this.

According to the confession Marty supposedly -- Oh, by the way, the 5:35, when you went into Marty's room, didn't you push the alarm clock dial to see what time the alarm was set for?

A No.

Q Did Detective Rein do that?

A Not that I'm aware of.

Q Did Detective Sergeant Doyle?

A Not that I'm aware.

Q The alarm clock was there, right?

A I don't know. I don't remember.

Q You don't remember seeing the alarm clock?

A No.

Q In any event, the confession says that Marty woke up at 5:35, right?

A That's what he told us.

Q He actually told you initially that he woke up at 5:35 and laid in bed for

1 K. J. McCready 312

2 a while then got up and went about the house
3 and found his parents, right?

4 A Right.

5 Q But during the time we'll call
6 the interrogation phase or the confession
7 phase, he said he woke up at 5:35 and got a
8 barbell and went to kill his parents with
9 it, correct?

10 A You have the written --

11 Q The written?

12 A Yeah, the written confession.

13 MR. DUNNE: You mean the typed?

14 MR. BARKET: No, I think he
15 means --

16 THE WITNESS: The handwritten.

17 MR. BARKET: Yeah, I actually
18 do.

19 MR. DUNNE: I was not sure.

20 MR. BARKET: Can we have this
21 marked, please, as an exhibit.

22 (Whereupon, Plaintiff's Exhibit
23 97 was marked for identification.)

24 Q Here's a copy of the written.
25 When you say the written part of it, what

1 K. J. McCready 313

2 this is is a -- The handwriting is yours; is
3 that correct?

4 A Yes.

5 Q And that you're writing out
6 something for Marty to sign, right?

7 A Yes.

8 Q But you didn't get all the way
9 through it, a lawyer called the squad and
10 said you have to stop questioning now and
11 you had to stop questioning?

12 A Yes.

13 Q So I was asking you about what
14 Marty supposedly said about what he did
15 after 5:35, alright. You have the written
16 statement there. If you need to refer to it
17 feel free.

18 MR. DUNNE: I'm sorry, after
19 5:35?

20 MR. BARKET: Yeah, after 5:35.
21 He woke up at 5:35.

22 Q He woke up at 5:35 and
23 according to you he got a barbell from the
24 weights that he has in his room, right?

25 A Yes.

K. J. McCready

314

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2 Q And that according to you he
3 went and looked for both of his parents,
4 correct?

5 A I believe he went and looked
6 and saw his father sleeping in the chair.

7 Q Initially, according to you, he
8 went to look for his parents in the bedroom
9 but only saw his mother there, right?

10 A That's what he initially said.

11 Q Then he went to the other side
12 of the house and found his father sleeping
13 in the chair, right?

14 A Yes.

15 Q And then decided to kill his
16 mother first and went back and attacked her,
17 according to you?

18 A Yes.

19 Q That he attacked her with the
20 barbell initially and cut her throat?

21 A Yes.

22 Q And then she was screaming and
23 so he went to the kitchen to get a knife?

24 A Yes.

25 Q Well, if he cut her throat

1 K. J. McCready 315

2 initially, why would he have to go back to
3 the kitchen and get a knife?

4 A No, he did not cut her throat
5 initially. He whacked her with the barbell.

6 Q Well, I'm reading from the
7 continuation report, the supplemental report
8 of Page 12. Is this what you wrote,
9 "Initially, he was surprised" -- and I'm
10 reading from the top of the page, one line
11 down -- "initially he was surprised that he
12 wasn't in bed with his mother and that the
13 lights were on. I asked him what he did to
14 his mother. He said he hit his mother with
15 a dumbbell then cut her throat. I asked him
16 how his mother was lying in bed. He said
17 she was in bed on her back. He was asked
18 how many times he stabbed her. He said he
19 didn't know how many times he stabbed her.
20 He volunteered that he got to her quickly."

21 And then later it says, "she
22 fought with him. He said she was in pain
23 calling for help saying, why, and help me."
24 And then it goes on to say that he ran in to
25 get a knife from the kitchen.

K. J. McCready

316

A Yes.

Q Are those the things that Marty told you in the order he told them to you?

A Not necessarily. That's the sum and substance of what he told us.

Q So they are not in the correct order there?

A I said not necessarily. I mean he told us both things. He ran to the kitchen to get the knife after he hit her with the barbell.

Q Okay. And then after he attacked his mother he went down the hallway naked carrying the weapons that he just used?

A Yes.

Q Those weapons would have had to have blood on them, no?

A Yes.

Q In fact, the knife, whatever was used to cut Mrs. Tankleff's throat, they say nearly decapitated but it was a deep neck wound; wasn't it?

A Yes.

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K. J. McCready 317

Q There would have been a tremendous amount of blood associated with that, correct?

A Yes.

Q And the beating about her head that would have also been a tremendous amount of bleeding or blood, right?

A Yes.

Q And Marty is naked. He doesn't have any clothing to absorb the blood that would have gotten on him, correct?

A Yes.

Q So you're saying that Marty's naked, carrying two bloody weapons, walked the length of the house, and then walked into his father's room, correct?

A Yes.

Q And then he walked around behind his father and beat and stabbed him?

A Yes.

Q So now the weapons would have both the mother's blood on it and the father's blood on it, correct?

A Possibly, yes.

1 K. J. McCready 318

2 Q When you say possibly, is there
3 anyway --

4 A Because I don't know what he
5 did in between. I don't know. He never
6 told us. I don't know what he did when he
7 went from the bedroom to the father's
8 office. He could have done anything at that
9 point in time. He might have had a towel
10 with him or something. I don't know.

11 Q Here's the thing. We can all
12 sit around and fantasize and speculate and
13 make up scenarios of what he could have
14 done, but the only thing we have is his
15 account now, and it's been that way since he
16 left your presence in that room that he
17 didn't do this, and your account of what he
18 supposedly told you?

19 A Yes.

20 Q So what he supposedly told you
21 is that he walked naked from one end of the
22 house to the other carrying two weapons
23 dripping with blood, right?

24 A Yes, but as I said before, you
25 don't always get a hundred percent out of

1 K. J. McCready 319

2 these guys. I don't think I've ever had --

3 Q You think that there was some
4 part of that that was minimizing Marty's
5 role according to you. That somehow him
6 walking naked with two weapons dripping with
7 his mother's blood to go attack his father
8 somehow was minimizing things?

9 MR. DUNNE: I'm objecting to
10 the form of that last exchange. Go
11 ahead.

12 A I don't know. Anything is
13 possible.

14 Q Of course anything is possible
15 but we're kind of stuck with the things that
16 we can prove or the things that people told
17 us, right? We're not allowed to sit here in
18 any setting and make up stuff.

19 MR. DUNNE: I'm objecting to
20 the colloquy here. You can continue
21 the questions.

22 Q Marty told you that he walked
23 dripping with blood from one end of the
24 house to attack his father?

25 A Where does it say he's dripping

1 K. J. McCready 320

2 with blood.

3 Q Wouldn't the weapons have to
4 have blood on them?

5 A They might have blood on them,
6 it doesn't mean dripping with blood. If it
7 was dripping with blood, I think we would
8 have found blood when we searched.

9 Q If Marty had done what you said
10 he said he did, right?

11 A That doesn't mean that the
12 thing was dripping with blood.

13 Q It means it's possible that the
14 knife and the barbell didn't have blood on
15 them or it was not dripping off?

16 MR. DUNNE: I object. He
17 offered an answer to that and you've
18 already commented on the answer he
19 gave you for that.

20 Q In any event, Marty is walking
21 carrying the two weapons having not told you
22 that he somehow cleaned them off before he
23 attacked his father with them, right? He
24 didn't tell you that?

25 A No.

K. J. McCready

321

Q And, in fact, you found nothing in the house at all indicating that he cleaned off those weapons with his mother's blood on them; did you? There's no towel?

A No.

Q Then he says he walked to the other end of the house and attacked his father with the same two weapons?

A Yes.

Q If what his confession is is true, he is now walking back to the other end of the house to take a shower carrying weapons, still naked, with the blood of his mother and his father on him, right? That's what the confession says; doesn't it?

A Yeah, but --

Q That's your account of things, yes?

A Yes, that's what happened. That's what he told us, yes.

Q Okay. And then he showers, correct?

A Yes.

Q And then he returns the knife

1 K. J. McCready 322

2 next to the watermelon, right?

3 A Yes.

4 Q And somehow the knife then gets
5 watermelon on it, right?

6 A Yes.

7 Q So we know that that literally
8 had watermelon on it, right?

9 A I do now.

10 Q At the time, it just was a
11 pinkish substance, correct? We didn't know
12 what it was when you were taking Marty's
13 confession?

14 A I don't remember first time I
15 saw that knife.

16 Q And then you go back, he goes
17 back, and he lies down for a bit, correct?

18 A Yes.

19 Q According to you that's what he
20 said he did, right?

21 A Yes.

22 Q And thought about what to do,
23 right?

24 A Yes.

25 Q And then wakes up and calls

K. J. McCready

323

911, right?

A Yes.

Q So that the timing for this would have been about -- say 9:35 so about to 6:11 so about 36 minutes or so?

A Yes.

Q So in 36 minutes Marty did all of these things and erased any forensic trace to him and being involved in this crime?

A Yes.

Q Did Marty have some kind of training in forensics that you're aware of?

A I have no idea. I only told you what he told us about taking a shower and washing his stuff off.

Q You all searched the drain; didn't you?

A Yes.

Q And you searched the drain because you know from your experience in investigating homicides that the drain has all kinds of material in it and traps in it that can collect things so when you wash

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K. J. McCready 324

something off it gets trapped in the drain?

A Unless there is something in that drain then it might catch the blood, but if there is nothing in that drain that's going to wash right away.

Q Wouldn't there still be traces of hair, or flesh, or blood on the traps of the drain?

A No. In the trap? Why would there be?

Q Why did you search for it?

A Because it's a good thing to do.

Q Okay. And you found nothing?

A We searched for it to corroborate what he had told us.

Q And you found nothing?

A Yes.

Q So when you went -- After you took this statement from Marty and you went out to try and corroborate the things that you say he told you, it turns out that the knife had no traces of blood or tissue on it, correct?

K. J. McCready

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A That's correct.

Q Turns out that in all likelihood his father was killed first, not his mother, correct?

A I don't know.

Q Well, there's blood from the father in the room where the mother was, but no blood from the mother in the room where the father was, true?

A Yes.

Q So in all likelihood his father was beaten and stabbed first and his blood was transferred to the mother's room, correct?

A That's a possibility.

Q And you analyzed the barbells as well and you found no traces of blood or hair or human tissue in the barbell, correct?

A Correct.

Q And nothing in the drain, correct?

A Correct.

Q And the blood that was found on

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K. J. McCready

326

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Marty, we talked about yesterday, was his

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father's blood, right, on the shoulders?

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You checked that out overnight?

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A No.

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Q So --

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A I took your word for it.

8

Q Thanks. So when you went out

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to corroborate the details of how these

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murders supposedly took place, none of it

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matched?

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A It wasn't the first time;

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probably won't be the last time.

14

Q Well, whether it was the first

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time or the last time, this time none of it

16

matched, correct?

17

A Correct.

18

Q You all searched -- and I say

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you all, I mean the police searched the

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yard, correct?

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A Yes.

22

Q You searched the cliff,

23

correct?

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A Yes.

25

Q You searched the house,

K. J. McCready

327

correct?

A Yes.

Q You searched every -- You looked at every possible weapon in the house; every hammer, every instrument that could possibly be used as a weapon, every knife, correct?

A I believe so.

Q None of that, nothing in the house, nothing outside, nothing on the bluffs, nothing anywhere had any traces of Arlene Tankleff's blood or Seymour Tankleff's blood; is that right?

A That's correct.

Q So as far as corroborating what he supposedly told you, there is nothing to corroborate, correct?

A No.

Q No, there is not anything to corroborate. I am correct about that, yes?

A Yes.

Q As far as what information was available to you at the time that you were taking this confession from Marty, the

1 K. J. McCready 328

2 information was available to you -- and when
3 I say to you I mean to you or police
4 officers with whom you had contact, okay.

5 You had the ability to see the
6 layout of the house, correct?

7 A Yes.

8 Q You could see that Marty's room
9 was right across from his mother's room,
10 correct?

11 A Yes.

12 Q You knew that Arlene Tankleff's
13 throat was cut, yes?

14 A Yes.

15 Q You knew because you called
16 Pfalzgraf, I think, that the father was
17 attacked and bludgeoned and cut, right?

18 A I knew that from Pfalzgraf,
19 yes.

20 Q Because he told you about it,
21 right?

22 A Yes.

23 Q So the details of the
24 confession that are here is all information
25 that was -- Let me finish. You also knew

1 K. J. McCready 329

2 about the knife; didn't you? The knife was
3 out there for you to see, whether or not you
4 remember seeing it or not, it was not hidden
5 from your view, right?

6 A No.

7 Q The barbells that were in his
8 room they were in plain site; were they not?

9 A I didn't see any barbells.

10 Q I didn't ask if you saw them, I
11 asked if they were in plain sight?

12 A I don't know. I don't know
13 where they were.

14 Q In any event, you were in
15 Marty's bedroom -- I'll show you pictures in
16 a second -- nobody stopped you from looking
17 around, right?

18 A No.

19 Q You could see whatever you
20 could see, yes?

21 A Yes.

22 Q In fact, you're not just there,
23 as we talked about yesterday, wandering
24 through, you're there specifically to look
25 for evidence of a crime, right?

1 K. J. McCready 330

2 A Yes.

3 Q You're one of the more seasoned
4 homicide detectives, correct?

5 A Yes.

6 Q And you're doing your job which
7 you're good at?

8 A Yes.

9 Q Same thing when you're in the
10 kitchen looking around in the kitchen,
11 correct?

12 A Yes.

13 MR. BARKET: Could we have this
14 marked, please, as 98.

15 (Whereupon, Plaintiff's Exhibit
16 98 was marked for identification.)

17 Q Could you take a look at what's
18 been marked as Plaintiff's Exhibit 98.

19 A Yes.

20 Q Do you recognize that?

21 A I recognize the photograph now.
22 I see the barbells down here (indicating).

23 Q Right.

24 A I don't remember seeing --
25 taking note of that that morning.

K. J. McCready

331

Q Whether you recall or not making a note of it, the barbells were there in plain sight for you and any other police officer or detective who wandered through to see, yes?

A I guess so.

Q And take your time, look at it as long as you'd like.

A Go ahead.

Q We spoke yesterday about Arlene Tankleff's wounds and you indicated that you went in and you observed the body, correct?

A Yes.

Q Now, again, this is not the first time you've observed a body at a scene of a murder; is it?

A No.

Q You have training at this? You have experience with this?

A Right.

Q I think you said you were involved in almost 300 homicides?

A Yes.

Q In this house, there is the

1 K. J. McCready 332

2 blood stains in the father's room, correct?

3 A Yes.

4 Q And at the time you were doing
5 the walk-thru the other evidence is the dead
6 body of Arlene there, correct?

7 A Yes.

8 Q In fact, in terms of evidence
9 in the house, really Arlene's body is the
10 most important thing there; isn't it?

11 MR. DUNNE: I'll object to the
12 characterization but go ahead and
13 answer that.

14 A Yes, I guess.

15 Q Sure. You know that there's
16 two people that have been attacked. There's
17 no obvious -- There's a dead body. You're
18 looking at the dead body, right?

19 A Right.

20 Q You said you examined it
21 closely enough to see the wound cut on her
22 throat, correct?

23 A Yes.

24 Q And, of course, the
25 photographers who's just taking pictures of

K. J. McCready

333

her, they're not moving her around before they take the pictures, right?

A Right.

Q They obviously take the pictures just as you find the person and then later on when the medical examiner comes she's moved, correct?

A Yes.

Q So you can see what the pictures depict, the front of her face, her chest and so forth, right?

A Yes.

Q You couldn't see her back; could you?

A No.

Q You couldn't see the back of her head or her back, correct?

A No.

Q And we've talked a little bit about where the blows were on her head and remember yesterday I said to you that part of her left ear was actually smashed off?

A Yes.

MR. BARKET: Can I have this

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marked.

(Whereupon, Plaintiff's Exhibit 99 was marked for identification.)

MR. DUNNE: This is an autopsy photo if I recall, correct.

MR. BARKET: Yes, it is. Why don't we do this one while we're at it.

(Whereupon, Plaintiff's Exhibits 100 through 105 marked for identification.)

Q Have you seen the autopsy photographs?

A No.

Q You never looked at them?

A No.

Q Okay. Let's do that.

MR. DUNNE: 101 and 102.

MR. BARKET: Mr. Dunne, you've seen the autopsy photographs, I take it?

MR. DUNNE: I have, yes.

MR. BARKET: You recognize these as the autopsy photographs?

1 K. J. McCready 335

2 MR. DUNNE: Yes, I do.

3 Q Let's start off with 100. Take
4 a look at that. You see what's depicted
5 there?

6 A Sure.

7 Q That's Arlene's head shaven,
8 correct?

9 A Yes.

10 Q With a number of head wounds,
11 correct?

12 A Right.

13 Q One being almost on her
14 forehead in the top, correct?

15 A Yes.

16 Q Several being on the left side
17 of her head, correct?

18 A Yes.

19 Q And one with her ear, clearly,
20 a piece of it missing from a blow, correct?

21 A Yes.

22 Q And, in addition to that, you
23 know that there were wounds in the back of
24 her head as well, 102, right?

25 A Yes.

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1 Q So when you're in the room --
2
3 and I showed you pictures yesterday of
4 Arlene -- you're free, and so was, I guess,
5 Detective Sergeant Doyle or anybody else who
6 went there, to examine her and look at her,
7 and you said you noticed her throat cut?

8 A Yes.

9 Q And whether you recall seeing
10 it or not, there's nothing preventing you
11 from seeing the obvious wounds to the left
12 side and the top of her head; was there?

13 MR. DUNNE: I'm going to object
14 to the form of the question on a
15 number of grounds but go ahead and
16 answer it as best you can.

17 A No. As I pointed out to you
18 yesterday, that picture is taken with a
19 flash. I did not see that.

20 Q Well, when you say it was taken
21 with a flash, I thought you said the
22 lighting conditions in the room were
23 excellent?

24 A I said the lighting in that
25 room was fine, that he should have been able

1 K. J. McCready 337

2 to see his mother when he originally --

3 Q But you, as a trained homicide
4 detective, should not have been able to see
5 that her ear was missing, that her head was
6 smashed in?

7 MR. DUNNE: I'm going to
8 object, Counselor. We went through
9 this for about 15 minutes here
10 today. I mean it's on the record.

11 Q In any event, the information
12 there about her head wounds was available to
13 you; wasn't it?

14 A When?

15 Q At the time that you were
16 looking at her and at the time that you were
17 interrogating Marty.

18 A We didn't know what all her
19 wounds were. I don't think we found that
20 out until 5 or 6 o'clock that night.

21 Q Well, you didn't know about the
22 wounds in the back before 5 or 6 o'clock
23 that night, right?

24 A I didn't know about -- The only
25 thing I observed, to me, is it looked like

1 K. J. McCready 338

2 someone had just slashed her throat.

3 Q The confession says,
4 interestingly, the confession says that he
5 hit her about the head but it doesn't say
6 anything about any wounds to her back,
7 right?

8 A No.

9 Q Or to the back of her head,
10 correct?

11 A No.

12 Q Clearly, what was not available
13 to you at the time that you were
14 interrogating Marty is the wounds that she
15 ended up being true that she had on her
16 back, right?

17 A No.

18 MR. DUNNE: I object to the
19 form. Go ahead.

20 Q You didn't know when you were
21 interrogating Marty that her back was slit
22 open; did you?

23 A No.

24 Q You didn't know when you were
25 interrogating Marty that her back -- she had

1 K. J. McCready 339

2 been stabbed; did you?

3 A That she had been what?

4 Q Stabbed in the back.

5 A No, only what he told me that
6 he stabbed her.

7 Q He didn't tell you he stabbed
8 her in the back even according to you.

9 A No, oh, no.

10 Q The confession, according to
11 you, only talks about blows to the head and
12 her throat cut, right?

13 A Yes.

14 Q Because at the time that you
15 interrogated him you hadn't seen, nor had
16 any of the police officers seen the wounds
17 on her back; had you?

18 A Not that I'm aware of.

19 THE VIDEOGRAPHER: Off the
20 record at 12:35 p.m.

21 (At this time, a brief recess
22 was taken.)

23 THE VIDEOGRAPHER: Beginning of
24 Tape 7. We're back on record at
25 12:55 p.m. You may proceed.

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1 Q Could I show you some autopsy
2 photographs? I'm referring now to 103, 104
3 and 105.
4

5 A Yes.

6 MR. BARKET: You've seen these
7 before, right?

8 MR. DUNNE: I have, yes.
9 They're our autopsy photographs.

10 Q As it turns out, Arlene
11 Tankleff had her right shoulder, if you
12 will, was severely cut, correct?

13 A Yes.

14 Q Kind of like from her middle of
15 her back going one way or the other but all
16 the way across her shoulder, and she had
17 several puncture wounds on her back as well,
18 correct?

19 A Yes.

20 Q And we know from the autopsy
21 report that there were actually blows to the
22 back of her head as well, correct?

23 A Yes.

24 Q None of those details, which
25 would have only been known to the killer,

1 K. J. McCready 341

2 are in the confession; are they?

3 A Not the specific wounds but the
4 fact that he stabbed her, it's in here.

5 Q But what's in there is the
6 information that was available to police at
7 the time you're taking interrogation?

8 A Well, it was available to him.
9 He's the one who did it. He told us.

10 Q According to you. We talked
11 about this yesterday, and I think we talked
12 about it with Detective Rein, that you're
13 looking for information that would only have
14 been known to the killer. You don't want
15 the confession to be a reflection of what
16 the police knew at the time; do you?

17 A No, I want to know --

18 Q But isn't it true that that's
19 largely what we have here. We have a
20 confession that reflects information that
21 was available to you, Detective Rein,
22 Sergeant Doyle.

23 A No.

24 Q The knife, the barbells, the
25 location of the rooms, the blows to her head

1 K. J. McCready 342

2 and her throat cut, was all information that
3 was available to the police at the time,
4 right? I'm right about that; aren't I?

5 A Yes, to a certain extent, yes.

6 Q And the information that was
7 not available to you, that she was attacked
8 from the rear, that the back of her head was
9 smashed in, that her shoulder was cut in the
10 back, that she was stabbed in the back,
11 that's not in the confession; is it?

12 A No.

13 Q And the smudges -- the blood
14 smudged on Marty's bedroom wall that turned
15 out to be gloved prints; didn't it?

16 A Not that I'm aware of.

17 Q You're not aware that the
18 smudge marks there had a pattern that
19 indicated that somebody was wearing gloves?

20 A Not that I'm aware of.

21 Q Okay. You really don't know,
22 even as you sit here now, that the testimony
23 at the trial was that there was gloved-like
24 print on the wall next to the switch or
25 below the switch in Marty's room? You're

1 K. J. McCready 343

2 not aware of that?

3 A I don't remember that.

4 Q Okay. Well, in any event,
5 we'll find out a little later if I'm right
6 about that, but that's not in the confession
7 either; is it?

8 A What's not?

9 Q The killer wore gloves.

10 A No.

11 Q So what we have is a confession
12 that contains information that was available
13 to the police at the time and no information
14 that was not available to the police at the
15 time.

16 MR. DUNNE: I'm going to object
17 to the form of that, but you answer
18 that as best you can.

19 A I don't know in retrospect
20 where -- I mean it's been a long time since
21 I thought about this, but I don't know how
22 much further we would have kept going with
23 the written portion of his confession
24 because we were stopped, so I could not -- I
25 was precluded from asking him anything

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K. J. McCready 344

further, even during the written, if I
wanted to continue that written.

Q You had Marty from 7:40 until
1:20, right?

A Right.

Q So that's how many hours? Is
that almost six hours, five hours and
40 minutes?

A Yes.

Q You questioned him at the scene
repeatedly, right?

A Yes.

Q You had Sergeant Doyle question
him. You had Detective Rein question him,
right?

A Yes.

Q You brought him back to
headquarters, correct?

A Yes.

Q You isolated him, right?

A Yes.

Q Put him in a room, right?

A Yes.

Q You questioned him for several

K. J. McCready

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hours in that room, correct?

A Yes.

Q Your excuse now for not getting other details from him is you didn't have enough time with him?

MR. DUNNE: I'm going to object to the form of the question and the characterizations contained in there, but you go ahead and answer that.

A What I'm saying is, I don't know what would have transpired had we had more time with him. We may have developed that as we went along. I don't know that because we were put on notice. We could not talk to him anymore.

Q You're not suggesting that after the body was turned over you could have asked him about the stab wounds in the back; are you?

A We could have if he hadn't been lawyered up.

Q Okay. But the confession that you say he gave you once you did the ruse

1 K. J. McCready 346

2 and kind of broke him, he told you readily
3 what, according to you, what happened, yes?

4 A Yes.

5 Q And it was, I think, Rein said
6 yesterday that it was in the form of a
7 narrative according to you all, right?

8 A Yes, but as I pointed out to
9 you earlier and on several occasions, they
10 don't always tell you a hundred percent of
11 what happened or the truth.

12 Q How is it that what supposedly
13 Marty said was only information that you
14 all, the police, knew about? How did that
15 happen? How did the minimization and the
16 lies that he supposedly told you only
17 contain information that you knew?

18 MR. DUNNE: Stop for a second.

19 I'm going to again object to the
20 content and the form of the
21 question. Go ahead and answer that.

22 A He told us what he told us.
23 What can I tell you?

24 Q One of the process -- Do you
25 all have a process of how you -- the order

1 K. J. McCready 347

2 in which you do things, you take orals, take
3 a written, take a videotape?

4 A Yes.

5 Q And that's the process that you
6 go through, right?

7 A Yes.

8 Q You do the orals first and then
9 when you're satisfied with the orals you
10 take the written; is that right?

11 A Yes.

12 Q And then once you take the
13 written, you're satisfied with that, you do
14 the videotaping?

15 A Yes.

16 Q And you bring in a prosecutor
17 for the videotape?

18 A Yes.

19 Q You did at the time anyway?

20 A Yes.

21 Q I notice that you didn't take a
22 written statement from Marty about what took
23 place, according to him, for the first four
24 or five times he went through this, right?

25 You didn't reduce to writing

1 K. J. McCready 348

2 him waking up, finding his parents, calling
3 911, helping his father and so forth, right?

4 A No.

5 Q When he was telling you, I
6 guess, over and over again what happened
7 that morning, that was not reduced to
8 writing?

9 A No.

10 Q Why not?

11 A Because it was in our notes so
12 it is in writing. I mean but it's not a lot
13 of that other stuff that he told us and
14 whatnot. That wouldn't be in the form of a
15 statement.

16 Q Why wouldn't you take a written
17 statement from somebody who's telling you
18 what happened when they woke up in the
19 morning and say, okay, here's your
20 statement. Just like you were planning to
21 have Marty sign this thing that you were
22 writing out for him, referring to
23 Plaintiff's Exhibit 97, right? You were
24 planning to have him sign this, yes?

25 A Yes.

1 K. J. McCready 349

2 Q Certainly, when you were
3 writing it you left spots for him to
4 initial, yes?

5 A Yes.

6 Q So why didn't you take a
7 statement when he was telling you, I woke
8 up, I think Jerry Steuerman did this. My
9 father -- I found my father. Why didn't you
10 take a written statement then?

11 A Because that's not our
12 procedure to do it that way.

13 Q What do you mean that's not
14 your procedure?

15 A We take notes.

16 Q Why didn't you write down this
17 part. This is all -- this stuff is all
18 inculpatory. It's all, I did it. When he
19 said, I did it, you did not write that down?

20 A Because that's the confession.
21 These are the notes.

22 Q Is it that you didn't believe
23 him the first time?

24 A No.

25 MR. DUNNE: Again, I'm going to

K. J. McCready

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object. He answered the question.

Q I get to ask another question.

Did you not believe him so you did not want to write down the exculpatory information?

A What are you talking about?

Q At some point you decided to reduce what Marty was telling you orally?

A Right.

Q Not simply take a written -- take whatever notes you all said were taken. But at some point you said, I'm not just going to write down on a pad what he said. I'm going to write out a written statement as to what he's saying so he can sign it.

By the way, when he signs it, he swears to it; doesn't he?

A Yes.

Q That's part of the process?

A Yes.

Q A notary comes in asking him to swear to tell the truth and you have him sign it, correct?

A We were notaries at the time.

Q Okay, and that's fine.

1 K. J. McCready 351

2 So if you had completed this
3 you would have actually had him swear to the
4 truth of this, correct?

5 A Yes.

6 Q What I'm asking is, why when
7 he's telling you other things, before he
8 begins to make what you call admissions, why
9 are those things not committed to writing
10 and he swears to those?

11 A Because they are only notes.
12 It's not a statement. I'm not taking a
13 statement from him at that point in time.

14 Q I know that you're not. I'm
15 not being clear, I'm sorry.

16 I know that you're not taking a
17 statement there. What I'm asking you is,
18 why don't you?

19 A There is no reason to do that.
20 We have the notes.

21 Q But you have the notes of this
22 too.

23 A I have the notes of that. I
24 have the notes of all the other stuff. The
25 non-inculpatory stuff, we have all the

K. J. McCready

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notes.

Q But why do you not reduce the non-inculpatory statements to a written statement, to a written statement that he would sign and swear to the truth of?

A Because we just don't do that. That's not -- We don't do that.

Q Is it that you did not believe what he was saying before that?

A I didn't believe initially. As I read my report, you'll see that when we get to the point we didn't believe him and when I pulled the ruse on him, as you call it, that's when he rolled over.

Q Right. What would you call it? I called it a ruse. Do you have another name for it?

A No. Well, you know, a lot of people would call it trickery and deceit but it's -- I don't know. It's a ruse.

Q It is what it is, right?

A Yeah.

Q You lied to him and --

A Yes.

1 K. J. McCready 353

2 Q -- and what happened happened.
3 I guess at some point you decide to move
4 from the orals that he was giving you that
5 supposedly Rein is writing down to, okay, we
6 have the orals now let's reduce the orals to
7 a written statement, correct?

8 A Yes.

9 Q As far as you got -- You got
10 pretty far into this, right? You got to the
11 part where it says, "I hit her four or five
12 times in the head. She fought with me. I
13 went to the kitchen, got a knife. I ran
14 back with the knife. I cut her throat. I
15 don't know how many times but I stabbed her
16 also; mostly I cut her throat and neck,"
17 right?

18 A Isn't that what that autopsy
19 shows.

20 Q It shows the wounds. This
21 reflects wounds to her?

22 MR. DUNNE: Well, objection to
23 the characterization. The evidence
24 will speak for itself.

25 Q Does it say in here, I stabbed

1 K. J. McCready 354
2 her in the back. I cut her shoulder. I hit
3 her in the back of the head?

4 A No.

5 Q Okay. It reflects what was at
6 least visible on Arlene as she was lying
7 before she was turned over?

8 MR. DUNNE: I'm objecting to
9 the form of that question. That's a
10 characterization of evidence. The
11 evidence will speak for itself. You
12 can answer the question as best you
13 can.

14 A Say the question again.

15 (The requested portion was read
16 back by the court reporter.)

17 Q The written statement reflects
18 what was visible on Arlene as she was lying
19 there, whether you remember seeing it or
20 not, true?

21 MR. DUNNE: My objection stands
22 again to that question as stated but
23 go ahead.

24 A I think that encompasses, based
25 on the fact -- Let me see that a second,

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K. J. McCready

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please.

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Q Sure.

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A When he says, I stabbed at her
also. Again, he didn't tell us that he
stabbed her in the back. He stabbed at her.

7

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Q You didn't know that she had
been stabbed in the back when you were
talking to him; did you?

10

A Did I know it?

11

Q Right.

12

A No.

13

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Q No police officer knew; did
they?

15

A Not that I'm aware of.

16

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Q It was not visible to any
police officer; was it?

18

A Not that I'm aware of.

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Q What I'm asking you about -- to
get back to my line of questioning, which is
that you got pretty far into this. You're
writing this down for him to swear to,
right?

24

A Yes.

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Q So you made a decision to go

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please.

Q Sure.

A When he says, I stabbed at her also. Again, he didn't tell us that he stabbed her in the back. He stabbed at her.

Q You didn't know that she had been stabbed in the back when you were talking to him; did you?

A Did I know it?

Q Right.

A No.

Q No police officer knew; did they?

A Not that I'm aware of.

Q It was not visible to any police officer; was it?

A Not that I'm aware of.

Q What I'm asking you about -- to get back to my line of questioning, which is that you got pretty far into this. You're writing this down for him to swear to, right?

A Yes.

Q So you made a decision to go

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from the orals to the written and you're writing it out and you're writing it down as he's telling it to you, correct?

A Yes.

Q You're not challenging?

A We're questioning him again, asking him questions.

Q But you're not challenging him at all, you're not saying, I don't believe this, I don't believe that; are you?

A No, not at that point.

Q Okay. So what's happening, and this is kind of -- what's happening is after he makes these oral admissions, you're then documenting what it is, what you believe to be his inculpatory statements, right?

A Yes.

Q You're going to write it out for him, right?

A Yes.

Q And then you're going to videotape him saying the same things?

A Yes.

Q So what we'll end up with and

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you've done this hundreds of times, right?

A Yes.

Q You have a set of orals, right?

A Uh-hum.

Q You have whatever notes you have on the orals. You can testify to the orals, right? Then you have a written statement, right? And that's going to reflect -- What was in the orals but it will be written out in the first person, correct?

A Yes.

Q First person being Marty Tankleff, I did this and I did that, right?

A Yes.

Q And then you're going to have a videotape that's going to repeat what was in the written statement and what was in the orals?

A Yes.

Q So when you're saying that you didn't know what was going to come had you had more time with him --

A I don't know.

Q -- nothing would have come of

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2 it, you would have just repeated what was in
3 the orals or what was in the written?

4 MR. DUNNE: I'm going to object
5 to the form and the suggestions. Go
6 ahead answer the question part of
7 that.

8 A If we were not put on notice,
9 we could have had Marty there for 24 hours
10 and kept talking to him.

11 Q What would you have done with
12 him after you had taken a written statement
13 from him?

14 A Well, we would have waited till
15 we found out what we did find at the scene
16 there and then asked him questions about
17 that.

18 Q And then that would have been
19 incorporated into the statements?

20 A Most definitely.

21 Q Okay. All right.

22 MR. BARKET: I think that's a
23 good spot to break. We'll come back
24 after lunch.

25 THE VIDEOGRAPHER: Going off

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the record at 1:11 p.m.

(At this time, a recess was taken in order to accommodate a lunch.)

THE VIDEOGRAPHER: Back on record at 2:06 p.m. You may proceed.

CONTINUED EXAMINATION BY

MR. BARKET:

Q Good afternoon, Detective. Mr. McCready, sorry.

A Detective is fine.

Q Okay. I want to -- I just ask you, you said there are six people on your team or were six people on your team at that time?

A Seven counting the sergeant.

Q Okay. Who were they?

A Norman, myself, Bob was the sergeant, John Pfalzgraf, Mike Carmedi, Bobby Anderson, and I forgot who -- Maybe somebody knows.

MR. BARKET: Anybody refresh his memory? I don't want to leave a

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blank for just this.

A Tony Ligaza, that's right.

Q Thanks. At the time Detective Rein was your partner, right?

A Yes.

Q Was he your partner till you retired?

A Yes.

Q Who was your partner before that?

A Bill Mahoney.

Q In homicide, right?

A Yes.

Q How about before that?

A In homicide?

Q Yes.

A Tommy Gill.

Q Anybody else as a partner in homicide?

A Not that I remember.

Q I'm going to ask you some questions, if I can, about the Diaz case. Do you remember that?

A Yes.

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Q Okay. Just to -- Again, like I said yesterday, I'm not making allegations, I'm asking you about them.

A Okay.

Q And so I want to do that, kind of to lay the background. That was a murder case? Diaz was charged with murder?

A Yes.

Q And at some point in time you were involved in interviewing witnesses; is that right?

A Yes, not witnesses to the murder but witnesses.

Q Witnesses, right.

A Yes.

Q I guess Judge Nan ended up concluding, right, that he believed that you had committed perjury in some fashion; is that right?

MR. DUNNE: I'll object to the form. I'm not sure that's correct but for our purposes, go ahead.

A Well, as you pointed out, everybody is entitled to believe what they

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2 want to believe, but I did not commit
3 perjury.

4 Q I want to lay the foundation
5 and then we'll get into the details of it.

6 I think Judge Nan concluded
7 that he did not find your testimony credible
8 in some regard; is that right?

9 A That's right.

10 Q And as a result of that, in
11 part and some other things, there was a
12 referral made to the State Investigation
13 Commission?

14 A Yes.

15 Q And they actually did an
16 investigation. And again, just to lay the
17 background, they also concluded that you
18 were -- I think they actually used the
19 term -- Well --

20 MR. DUNNE: They did.

21 Q They actually used the term
22 perjury in connection with your testimony
23 there?

24 A I know they did, but I don't
25 care what they think.

K. J. McCready

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2 Q In that instance, you had a
3 judge and an independent State investigative
4 body saying that you committed perjury in
5 the course of testifying in a murder case?

6 A That's correct.

7 Q Now, let's talk a little about
8 the details of what happened there. And
9 correct me if anything I say is wrong, of
10 course, but you were interviewing some
11 witnesses, some --

12 A Railroad workers.

13 Q Railroad workers. And there
14 was some question, was there not, about how
15 they identified Mr. Diaz, right?

16 A Yes.

17 Q Okay. And if I understand it
18 correctly, you initially reported to the
19 DA's office and testified that they
20 identified him from a newspaper article that
21 contained Mr. Diaz's photograph; is that
22 right?

23 A That's correct.

24 Q And you knew at the time that
25 part of your job as a detective is to

1 K. J. McCready 364

2 conduct identification procedures, right?

3 A Yes.

4 Q And unlike what they -- and
5 identification procedures is something you
6 need to be trained to do, right?

7 A Yes.

8 Q Unlike what they do on TV, you
9 just don't show a Polaroid to somebody and
10 say, is this the guy and they say yes.
11 There is actually processes you have to go
12 through.

13 A Yes, but there is --

14 Q Well, there's some training
15 involved in this, yes?

16 A Yes.

17 Q And part of what happens is, if
18 there are identification procedures, I think
19 this was true even in the eighties, you have
20 to give -- not you but law enforcement, the
21 DA's office specifically, has to give notice
22 of those identification procedures to the
23 defense?

24 A With regard to Wade situation,
25 I would think so. I don't necessarily think

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so in a confirmation identification process.

Q Okay. You're actually correct, right, that there are some instances where you do a line-up or a photo pack where you're showing a photograph of an individual that's not known to the person and asking him to identify them. Those have to be notified -- Those procedures have to be --

A Right.

Q -- noticed. The defense has to be given notice of them, right?

A Yes.

Q But if you're just showing a picture to confirm that you're both talking about the same person and the witness knows the individual, then you don't?

A Right.

Q Right. So what happened here was, I guess you reported and ended up testifying, that the witnesses had identified Mr. Diaz from newspaper photographs, right?

A That was my belief at one point, yes.

1 K. J. McCready 366

2 Q Okay. So that's what you
3 testified to, right?

4 A Yes.

5 Q And then, when it became
6 apparent that there was no newspaper
7 photographs ever published of the
8 individual, you came back and testified that
9 that was a mistake, right?

10 A Yes.

11 Q And that what, in fact, had
12 happened is you had shown them a single
13 picture of Mr. Diaz and they identified him
14 from that picture?

15 A Yes, they did. Let me go back
16 a little bit here. What happened was they
17 told me that they saw him in the newspaper.
18 Now, you both know when you assume something
19 you make an ass out of you and me, right, so
20 my mistake was I assumed that they saw his
21 picture in the paper.

22 When I spoke to them about it,
23 they said they saw him in the newspaper
24 when, in fact, they actually only saw his
25 name in the newspaper but they knew him.

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2 And I showed them one
3 photograph of Diaz and I said, is this the
4 guy you're talking about and they all three
5 said yes.

6 Q Okay. When you testified
7 initially, did you testify that they had
8 identified -- Did you testify about that
9 single photograph that you showed to them or
10 did you just tell the court about the
11 newspaper?

12 A I did yes, I did. I turned
13 around and told them.

14 Q Well, no, initially, before it
15 was discovered that the photographs weren't
16 in the paper --

17 A No.

18 Q -- did you tell the court about
19 the single photograph?

20 A No.

21 Q So that what happened was --
22 and I think we all agree on kind of the
23 sequence here -- is that you testified that
24 the witnesses identified the individual from
25 a newspaper photograph, yes?

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A Yes.

Q But initially you didn't tell the court about the photograph that you showed them, correct?

A No.

Q When you say no, I'm wrong or I'm correct that you did not do that?

A No, no, I did that. Yeah.

Q Let me back up again, sorry. That initially you told the court only about the newspaper identification?

A Right.

Q You did not tell them, the court, about the single photograph you showed the witness initially; am I correct?

A Right.

Q And then it was discovered that the newspaper did not have a photograph in it, true?

A Yes.

Q And then you went back to court and testified that you said, I actually did show them a single photograph, correct?

A Yes.

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2 Q And your testimony is that that
3 was confirmatory, right?

4 A Yes.

5 Q Not that you were trying to
6 hide an improper identification procedure?

7 A No, I was not.

8 Q And you would agree with me
9 that kind of cutting corners or fooling with
10 identification procedures would be quite a
11 problem; wouldn't it?

12 MR. DUNNE: I'll object to the
13 form of the question but go ahead
14 and answer that.

15 A That would have been a problem
16 had it been a Wade issue, but it wasn't.
17 Like you said, it was a confirmatory
18 identification. Once the railroad workers
19 knew him from him sleeping on the train so
20 it's like me if I go back to Hauppauge and
21 somebody says, do you know Bruce Barket? I
22 said yeah, I just recently met him. Oh, is
23 that him? Yeah, that's him.

24 Q Oh, I'm just curious why didn't
25 you just tell the court about that if it was

1 K. J. McCready 370

2 just a regular old --

3 A I wasn't asked until after --
4 till Mr. Gianelli asked me.

5 Q Nobody asked you if you had
6 shown a single photograph to the witnesses?

7 A No.

8 Q And it kind of moved to the
9 general, for a moment anyway, I may come
10 back to the details, but what I was saying
11 is identification testimony is fairly
12 important testimony, right?

13 A Yes.

14 Q And often times you have
15 witnesses who don't know an individual or
16 only have seen them once or twice and you
17 have to do these identification procedures,
18 right?

19 A Yes.

20 Q And in those cases it really is
21 a problem to show a single photograph to a
22 witness; isn't it?

23 MR. DUNNE: I'll object to the
24 form of the question but go ahead.

25 MR. BARKET: Actually, he's

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right. Let me withdraw the question.

Q It's improper -- you know it to be improper to show a single photograph to a witness who is a stranger to a suspect; don't you?

A It only depends if it's a -- Bruce Barket did the murder and you show them one photograph of Bruce Barket. That would be improper. But if I showed him five photographs and said, which one is the guy you're talking about, and they say that guy, then it's part of a Wade issue and therefore that becomes a valid photo spread and et cetera, et cetera, et cetera.

Q And then, I think we're saying the same thing. And the reason why it would be improper to show the single photograph of the suspect to a witness is that it ends up suggesting to the witness that the perpetrator is the person in the photograph and the perpetrator -- excuse me.

Let me start again. The reason why it would be improper to show a single

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witness a single photograph to a witness is
that it is suggestive; is that right?

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That's the phrase that's used?

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A Yes.

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Q Right. We want the witness to

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tell us what they remember and who they

8

think committed the crime, right?

9

A Well, see this is where you and

10

I are going to have a little problem because

11

they didn't witness any crime.

12

Q Well, whatever they are a

13

witness to.

14

A They're a witness to him

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sleeping on the railroad train that was it.

16

Q Okay. But I'm not talking

17

about that case in particular. I'm talking

18

generally.

19

A Oh, yeah, fine.

20

Q The reason why it's improper to

21

do that is because we don't want the witness

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to make an identification based upon a

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suggestion by the police officer, right?

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A Right. Well, especially if

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they're a witness to the crime.

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Q Right. And you don't want to show a single photograph because it would end up tainting the witness's testimony -- they might end up -- Is that true?

A Yes. It could be in a situation that I'm talking about with regard to you or somebody witnessing you do a crime and I only show them one picture, that's wrong. That's improper.

Q And we agree.

A They didn't witness any crime.

Q Well, actually, the prohibition against showing a single photograph to a witness applies whether or not the person witnessed a crime or is identifying the subject in the courtroom for some other reason, right?

A No. No. I don't think so. I don't believe that's the case.

Q Okay. Well, you think that if a witness is going to come into the courtroom and identify the Defendant and say, I saw the Defendant do X, even if X wasn't a crime, that you can then suggest to

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the witness who the Defendant is?

A Like I said, this was a confirmatory identification. They knew him.

Q And I'm not disputing that right now. We're not talking about that. I'm talking generally speaking, right, you said we agree that it would be improper to show a single photograph to a witness, right?

A It depends on the circumstances.

Q Say a witness who's a stranger to the suspect?

A Yes.

Q That would be improper. And the reason why it would be improper is that the witness may end up making identification of the Defendant not based upon their independent memory but based upon the single photograph a police officer showed them?

A Yes, but they've had --

Q We're not talking Diaz, just generally speaking.

A Oh, right, yes.

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Q That's true?

A Yeah.

Q For a police officer -- I'm not saying you did this or frankly didn't do it, I wasn't there -- but for a police officer to engage in that kind of improper conduct it would be a serious misstep by the officer or detective; would you agree?

MR. DUNNE: I'll object to the form of the question but go ahead and answer that.

A Yes.

Q That making sure --

A We're not talking about the Diaz case here.

Q Correct. I'm not saying you did or didn't do anything improper.

A Right.

Q But conducting identification procedures and showing witnesses photographs, lying about that would be an egregious act of misconduct by an officer; would you agree?

MR. DUNNE: I'll object to the

1 K. J. McCready 376

2 form but go ahead.

3 A Yes.

4 Q And it would be -- I mean just
5 to draw an analogy, it would be just as bad
6 about lying about how you obtained a
7 confession from a suspect.

8 MR. DUNNE: Again, I object to
9 the form of the question.

10 A No. You're talking apples and
11 onions here. In a Wade situation, I would
12 have done a photo spread. What we're
13 talking about is a confirmation ID here and
14 it has nothing to do -- there is no
15 comparison between a confirmation
16 identification and a confession.

17 Q Not saying that there is. I'm
18 saying that if a detective or police officer
19 were to lie --

20 A Yes.

21 Q -- about how they conducted an
22 identification procedure, that act of lying
23 about eyewitness identification would be
24 just as bad as lying about a confession?

25 MR. DUNNE: I'm going to object

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to the form. That's kind of a
suggestive statement.

A That would be common sense,
yes.

Q Of course, right?

A Yes.

Q You don't want detectives lying
about how they are conducting important
parts of an investigation?

A That's right.

Q Be it how they take confessions
or how they do identification procedures?

A That's right.

Q If a detective is willing to
lie about one, you might think they are
lying about the other?

A Yes, you can draw an inference
but that's not --

Q You're saying that's not what
you did with Diaz?

A No.

Q Okay. In the course of your
preparation for Diaz and the testimony, did
any prosecutor ever ask you if you showed a

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single photograph to a witness?

A No.

Q One of the things that I want to talk to you about, and I think that -- Crime scene photographs and showing those to witnesses.

A Yes.

Q Did you do that in the Martin Tankleff case?

A I may very well have.

Q When we're talking about crime scene photographs, I'm talking about some of the kind of rather graphic pictures of the mother or the blood. Did you show those kinds of pictures to civilian witnesses in this case?

A I may have.

Q Well, the attorney general's office who conducted the investigation after Marty's case was reversed, after his conviction was reversed, indicated that in a memo to the court, and one of the reasons why they decided not to go forward with any prosecution of Martin Tankleff, specifically

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2 sited misconduct on your part in showing
3 photographs to witnesses; do you remember
4 that?

5 MR. DUNNE: I'll object to the
6 form of that. Go ahead and answer
7 that.

8 A I remember that but they're
9 wrong. I mean we use photographs all the
10 time in investigative tools.

11 Now, I was asked why did I show
12 McNamara photographs. To be honest with
13 you, I don't remember. I don't remember. I
14 don't know what the question was or what the
15 situation was, but showing a crime scene
16 photo to an individual there's nothing wrong
17 with that. We use them as investigative
18 tools. But I don't know what I was trying
19 to glean from maybe Mr. McNamara or
20 whatever. I don't remember that whole
21 conversation with McNamara about that. It
22 was so insignificant, I don't remember.

23 Q Well, also, Dan Hayes reports
24 that you showed him a crime scene photograph
25 just before his testimony in the criminal

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1 trial as well. You brought him into the
2 evidence room and showed him crime scene
3 photographs; is that true?
4

5 A Not that I'm aware of. I don't
6 remember showing him. The only one I
7 remember showing photographs to is McNamara
8 and I would be damned if I could remember
9 why.

10 Q Well, the graphic photographs,
11 some of which we've looked at here, and all
12 of us, I guess, except for the court
13 reporter who understandably is kind of
14 revolted by them, what possible
15 investigative tool could you think of for
16 showing McNamara --

17 A I don't remember. If I
18 remembered, I'd tell you.

19 Q Can you think of any proper
20 reason for doing that?

21 MR. DUNNE: I'll object to the
22 characterization in the question but
23 go ahead and answer.

24 A I don't know why I showed him
25 the photograph.

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Q There were -- Did you show crime scene photographs to any of the Tankleff family?

A Not that I remember.

Q Shari Rother?

A Not that I remember.

Q Ron Rother?

A Not that I remember.

Q There were some civilian witnesses who testified about statements that Marty had made over the course of the summer. Apparently, Marty was bragging about his wealth; is that right?

A Yes.

Q There were a couple of girls, right, who had said he was kind of bragging about how rich he would be or how rich his parents were; something like that?

A Yeah, words to that effect. That he would be rich if his parents were dead or something like that.

Q Actually, and they testified to something along those lines that Marty was saying, if my parents weren't around I could

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2 have any car I wanted or any house I wanted
3 or something like that?

4 A Yeah, something like that.
5 Yes.

6 Q Did you show those girls crime
7 scene photographs?

8 A Not that I remember.

9 Q Let's just take it out of the
10 Martin Tankleff case for a second, and I
11 want you to assume two things. A, that
12 there are graphic pictures and B, that the
13 witness had nothing to do with the crime
14 scene. In other words, they didn't witness
15 the crime, there was no need to show them
16 crime scene photographs to document or have
17 them testify about where things happened.

18 Can you think of any legitimate
19 reason why you would show crime scene
20 photographs to civilian witnesses?

21 MR. DUNNE: I object again to
22 the parameters of the question.

23 Q Not McNamara. I know you say
24 you don't remember McNamara. I'm saying
25 generally is there any or legitimate reason

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for doing that?

MR. DUNNE: I object to the form of the last two questions. Go ahead, Detective.

A We use crime scene photographs as investigative tools.

Q How?

A It depends on the circumstances. I don't know. It depends -- I don't remember why I showed McNamara that photograph. What do you think I run around, hey guys, look at this, look at this. No, you don't do that.

Q No, I guess the implication from the attorney general's office is that you're using it to push the witnesses to color their testimony in a way that would be helpful to the prosecution to get them on your side.

MR. DUNNE: Again, is that a question or a statement?

MR. BARKET: That's a question.

MR. DUNNE: Well, is the question did you do that?

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2 Q Is that the motivation for
3 doing that?

4 A No.

5 Q Did you show pictures to the
6 civilian witnesses and say to them, look
7 what this kid did; look what we have to say
8 to them, your testimony is important, we
9 have to put this murderer away?

10 A No.

11 Q You're certain of that?

12 A Absolutely certain.

13 Q You're as certain about that as
14 you are about the way the confession was
15 taken?

16 A Yes.

17 Q If we were to find out that you
18 were not being truthful about showing the
19 crime scene photographs to the civilians,
20 should we also doubt your word about how the
21 confession was taken?

22 MR. DUNNE: Objection. C'mon
23 Bruce, that's not a fair question.
24 That's for the purpose of eliciting
25 facts.

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2 Q It's reported that you showed
3 crime scene photographs to a number of
4 different civilian witnesses and you're
5 saying the only person you remember is
6 McNamara?

7 A The only one I remember showing
8 it to was McNamara.

9 Q But you said you did this as a
10 matter of routine, you used crime scene
11 photographs?

12 MR. DUNNE: Again, I object to
13 the characterization of the
14 question. Go ahead and answer that.

15 A We use crime scene photographs
16 as investigative tools.

17 Q I guess I'm asking you -- Look,
18 give me any or give us any legitimate reason
19 for showing crime scene photographs to
20 witnesses?

21 MR. DUNNE: I object to the
22 form of the question. Go ahead.

23 A I don't know how many times I
24 gotta tell you. It depends on what's going
25 on. We use them as investigative tools.

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2 Now, I don't remember why I used that
3 particular photograph or what photographs I
4 even showed McNamara but the bottom line is
5 I don't run around showing pictures just for
6 the hell of showing pictures.

7 Q This isn't just me asking these
8 questions, and the attorney general's office
9 wrote this and I'm going to ask you if you
10 read this.

11 "The behavior of one of the
12 detectives in the case, Detective James
13 McCready, retired, was problematic in this
14 case. The evidence that we have collected
15 shows that he showed crime scene photographs
16 to witnesses when there was no legitimate
17 law enforcement reason for doing so."

18 Can you --

19 A You know, that's the attorney
20 general's office, right?

21 Q Yes.

22 A I'll be honest with you, I
23 don't give a damn what they think. That's
24 what they think. They have no idea. They
25 weren't there. They weren't shown the

1 K. J. McCready 387

2 photographs. I think -- You don't want to
3 know what I think.

4 Q Well, I just asked you what you
5 thought. Whether I want to know or not,
6 feel free to answer.

7 A That's not what I'm talking
8 about, not with regards to that question.
9 I'm talking what I think about some other
10 things, that's all.

11 Q Look, I mean you had a job to
12 do back then, right?

13 A Yes.

14 Q You had a job to do, you
15 thought Marty Tankleff killed his parents,
16 right?

17 A Yes.

18 Q And you thought that if you had
19 shown crime scene photographs to individuals
20 you would have done so in furtherance of
21 your investigation in the prosecution of
22 this case; is that right?

23 A Yes.

24 Q You were doing it because you
25 thought it would help the case, yes?

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2 A I don't know why. I don't
3 know. Whoever said I showed them
4 photographs, I think I would remember it but
5 I don't remember. The only one I remember
6 showing photographs to is McNamara.

7 Q That's not the question. The
8 question I asked you was, if you were doing
9 it, and I guess you were at least to
10 McNamara, you were doing it because you
11 thought it would help the prosecution of
12 Marty Tankleff, right?

13 MR. DUNNE: Again, I object to
14 the form of the question but go
15 ahead.

16 A I don't know whether it would
17 have helped or hurt, but obviously I don't
18 remember why McNamara -- why he wanted to
19 see something. I don't remember why I
20 showed it to him.

21 Q You said before that you
22 weren't just showing photographs.

23 A Right, but I don't remember the
24 back and forth between me and McNamara or
25 why the crime scene photographs even came

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up.

If I had had photographs, I might have even asked Marty to initial some of them.

Q That would have been a legitimate --

A That's something if he didn't get lawyered up, as I said before, if we had him for 24 hours we could have confirmed more and more and more.

Q You would have gathered more information and put more information into the confession?

A I would have tried to elicit more information from him but I couldn't.

Q At the point in time that you were taking the oral statements, you were done taking the orals, right? Nobody interrupted?

A Up to that point.

Q Nobody interrupted you. Nobody stopped you from questioning further at that point?

A No.

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Q You were done with the orals and you decided to move to -- let me finish my question -- you were done with the orals and you decided to move from the oral statements, move from that phase to writing out the written statements?

A Yes.

Q So it's the written statement that was interrupted, not the oral statement, correct?

A Right.

Q I want to go back to the crime scene photographs if I can. It also says in here -- I'm reading from the attorney general's memo to the court dismissing the case against Marty Tankleff, and I want you to comment on this.

"Detective McCready acted alone when he showed photographs to others. Based upon our investigation, no other law enforcement representative with whom we met from either the Suffolk County Police Department or the Suffolk County District Attorney's office was aware that Detective

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McCready had engaged in such a behavior and all of them stated that it was improper.

Detective McCready himself recognized that it was improper. He told one witness that he was behaving improperly even as he showed the photographs to that witness."

There's two parts of that that I want to ask you about. The first part is that according to the attorney general's office, that fellow police officers and people at the DA's office agreed that you showing these photographs was improper.

I'll give you a chance to respond to that.

A I don't know who you're talking about. I don't have no idea who you're talking about. The only person I remember showing a photograph to is McNamara and I don't remember why.

Q I'm not talking about McNamara. I'm talking about the attorney general's office having interviewed people from the Suffolk County Police Department, other

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members of your squad, other members of the District Attorney's office. They said they didn't know you were doing it and that doing so was improper.

6

MR. DUNNE: I'm going to object

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to the form.

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Q Do you have a comment on that?

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A No, I have no comment. I have no idea.

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Q They also said that when they

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asked you about it you had recognized that

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it was improper.

14

A I what?

15

Q That you said it was improper.

16

You agreed that it was improper to do.

17

A I don't remember saying that to

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them.

19

Q Did you tell McNamara that as

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you were showing him the photographs that

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you shouldn't be doing this but that you

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were doing it anyway?

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A I don't remember saying that at

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all, no.

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Q And as you sit here now, can

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you offer up any legitimate purpose for showing crime scene photographs to a civilian witness?

MR. DUNNE: Other than what's he's already been asked?

A With respect to this case?

Q Any case.

A I told you we use them as investigative tools.

Q I understand that, but what I'm gathering from reading the attorney general's report is that the investigative tool or technique that you're employing is to gain -- push the witnesses further into the prosecution's corner by showing them the horror of the crime and accusing the Defendant of it?

A No.

Q Because --

A I didn't do that.

Q Other than that, other than doing it for that reason, what possible reason would you have to show graphic photographs to civilian witnesses?

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2 A Didn't I answer that five times
3 already?

4 Q You said that you do it for law
5 enforcement reasons.

6 A Yes.

7 Q You have not given me or us any
8 reason.

9 A Well, it depends on the
10 purpose. I have no idea.

11 Q Name one. Any.

12 A Okay. Let's say there was
13 another person in the house with Marty that
14 night, right, and they came in and they saw
15 Arlene laying the way she was, whatever, I
16 might show them that photograph and say, is
17 this what you saw. And if they say yes,
18 it's again confirmatory-type situation.

19 Q Was McNamara in the house?

20 A I don't know. I don't
21 remember.

22 Q Was Dan Hayes in the house?

23 A No, not that I know.

24 Q Were the girls that Marty was
25 bragging to about his parents wealth in the

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house?

A No.

Q We'll talk just about McNamara. Forget what actually happened, can you think of any legitimate reason why you would have done it?

A I don't remember. If I remembered, I would be glad to tell you.

Q But it is fair to say that you were in the process of helping the prosecution build a case against a person that you arrested when you were showing these photographs, correct? You did not --

A Yes.

Q Right. I mean whatever the reason was it had to be to further the investigation --

A Right.

Q -- or the prosecution?

A Whatever. Or to jog their memory about something. I don't remember.

Q Same thing with Diaz that you weren't just out interviewing railroad workers, you were out trying to build a case

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against Diaz, right?

A Yes, yes.

Q And the same way you kind of engage in whatever you do with respect to interrogations. You're just not sitting around asking questions, you're trying to build a case against a person who you think committed a crime?

MR. DUNNE: I object to the form. Go ahead.

A Yes.

MR. BARKET: I dare say that in my mind I'm done, but my mind does not control so can we take a five-minute break.

MR. DUNNE: Sure.

THE VIDEOGRAPHER: Off the record at 2:40 p.m.

(At this time, a brief recess was taken.)

THE VIDEOGRAPHER: Beginning of Tape 8. Back on the record at 3:05 p.m. You may proceed.

CONTINUED EXAMINATION BY

K. J. McCready

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MR. BARKET:

Q Detective, do you know Shari Rother?

A Shari Rother?

Q Yeah.

A Yeah.

Q How did you meet her?

A After he murdered her parents.

Q Are you saying you did not know Ms. Rother prior to the murder of Marty's parents?

A No.

Q And how about Ronald Rother, did you know him before that?

A No.

Q Did you eventually go into business with Ron Rother?

A Yes.

Q We talked about this briefly yesterday.

A Yes.

Q Was some of the money that Ron put up from that the proceeds of the Estate of Tankleff?

1 K. J. McCready 398

2 A Not that I'm aware of.

3 Q Sorry. Just one second. Was
4 there a Mr. or Detective Genna that
5 testified; do you remember?

6 A Bob Genna?

7 Q Yes.

8 A Sure.

9 Q Who is he?

10 A Right now, I think he's the
11 head of the lab, crime lab.

12 Q Okay. And I asked you
13 yesterday whether or not you recall -- well,
14 maybe it was this morning -- whether or not
15 you recall that the smudges or the blood on
16 the wall near the switch, light switch in
17 Marty's room was a glove-like print; do you
18 remember that?

19 A Yes.

20 Q I want to refer you to the
21 testimony of -- is it Detective Genna or Mr.
22 Genna?

23 MR. DUNNE: No, he's a
24 civilian.

25 Q So Mr. Genna or Dr. Genna, at

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pages 2460, I'm just going to read this from line 8.

"Q. What was the pattern you found in that particular location?

A. It was a chain-like honeycomb pattern.

Q. Did there come a point in time, Mr. Genna, after identifying these particular patterns on these six items to which you just referred, that you drew any conclusion with respect to the origin of those patterns which you are able to discern this chain-like or honeycomb pattern to which you're referring?

A. Yes.

Q. Would you please tell us what your conclusions and opinions are to a reasonable degree of scientific certainty with respect to the origin of those particular chain-like or honeycomb-type patterns?

K. J. McCready

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A. Yes. My conclusion was that the patterns were consistent with the type of pattern that you commonly find on the grip areas of the fingers or the palm area of a glove, either a fabric or a rubber glove."

You can take a look at it yourself. Does that refresh your memory that the blood smear on the wall in Marty's room came from a gloved or a glove-like print?

You don't remember it from 20 years ago? You don't remember?

A No.

Q Point of fact, it was not only the wall, I think the sheets in Marty's room also had a similar pattern -- excuse me, the sheets in Marty's parents bedroom where Arlene was also had a similar pattern.

A I'm not aware of that. That's the first I've ever heard that.

Q Anything to do with the glove-like prints or on the sheets as well?

A No, not on the sheets.

K. J. McCready

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2 Q Did you hear or did you become
3 aware or ever see a knife print on the
4 sheets?

5 A No. Now, I'm aware at this
6 time that some moron up in the State lab or
7 whatever claims that there's a knife print
8 or something on the sheet, but I don't know
9 if that's necessarily correct.

10 Q Well, when you say some moron
11 up in the State police lab, let's just break
12 it down a little bit.

13 In 2008, a special prosecutor
14 was appointed in this case, right? You know
15 that?

16 A Yes.

17 Q Thomas Spota stepped aside and
18 he allowed the attorney general's office to
19 conduct the investigation; you remember
20 that?

21 A Yes.

22 Q And the governor agreed,
23 removed him as a prosecutor, and appointed
24 the attorney general's office, right?

25 A Right.

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Q And just so we're clear, Thomas Spota is the same Thomas Spota that is now the current district attorney and who was your lawyer back in 1991 or '92 when you were on trial?

A Yes.

Q And that the attorney general's office along with the State police conducted an investigation following their appointment as a prosecutor in this case, right?

A Yes.

Q And they took all the evidence and reviewed it and somebody from the State crime lab, State police, looked at the sheets from Marty Tankleff's mother's room and --

A Right.

Q -- indicated that there was a knife pattern on those sheets; you know that, right?

A Well, yes.

Q All right. So now, I know you were just being flippant. You don't know the individual who performed that test; do

K. J. McCready

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you?

A No.

Q You don't know if that person is an expert in bloodstain patterns, what his training or her training or experience is; do you?

A No.

Q So when you said that person is a moron, you were just being a little flippant and a little sarcastic?

A Yes.

Q It might be a highly-skilled investigator who found a knife-like print, right?

MR. DUNNE: I object to the form but go ahead.

A Excuse me. Might be.

Q Might be. And, of course, you also know, and I guess it would be fair to say the person might be a "moron" you just don't know who it is.

A Might be.

Q Might be. And, of course, we do know that the knife-like print was

K. J. McCready

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1
2 compared to every single knife in the
3 Tankleff residence, right?

4 MR. DUNNE: Again, I object to
5 the form --

6 A I didn't know.

7 Q You didn't know that?

8 MR. DUNNE: I'm going to object
9 to the form and the characterization
10 of the question. Go ahead.

11 A I didn't know.

12 Q And you didn't know that part
13 of their analysis was not only that they
14 found the knife print on the sheet, but that
15 they compared it to every knife in the house
16 and it didn't match a single knife in the
17 Tankleff residence?

18 A I didn't know that was their
19 opinion.

20 Q Assuming that's true, that
21 would indicate that whoever committed this
22 crime used that knife and then took it from
23 the residence, right?

24 MR. DUNNE: Again, I'm going to
25 object to --

K. J. McCready

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A I don't know.

MR. DUNNE: -- that on many grounds but go ahead and answer that.

A I don't know. Well, I don't agree with their findings so therefore I can't agree with that.

Q It's interesting that you say you don't agree with their findings because we just got done talking about you have no idea who the person is who made these findings.

A I don't.

Q There's no reason to suspect that the lab technician, or the criminalist, or the blood spatter or whatever, the expert that looked at this, this is not somebody that Martin Tankleff hired; is it?

A No.

Q This is somebody with the State police, right?

A Yes.

Q And because that evidence that they found is somewhat inconsistent with

K. J. McCready

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Marty's guilt, you just dismiss it and call the person a moron?

MR. DUNNE: I'm going to object to the characterization in the question. Go ahead and answer that as best you can.

A No, no. I'll tell you what, I spoke too fast on that because I've had conversations with other experts about that particular opinion and they don't agree with that opinion; so that's all I'm going to say. That's all I have to say.

Q What expert have you spoken to?

A Bob Genna.

Q Bob. You spoke to Bob Genna.

When did you speak to Mr. Genna, Bob Genna?

A Last Friday night.

Q Last Friday night. Today is Wednesday. Last Friday was December 7th?

A Yes.

Q And you spoke to him in the context of you were talking about the Martin Tankleff case?

A I asked him one question.

1 K. J. McCready 407

2 Q Where were you when the
3 conversation took place?

4 A At the Detective's Association
5 Christmas party.

6 Q Okay. For Suffolk, I take it,
7 right?

8 A Yes.

9 Q And did you have a longer
10 conversation with him? Was it just one
11 question about the Tankleff case?

12 A The only thing I said to him, I
13 said, what's this nonsense about this blood
14 print, or knife, whatever on the sheet, and
15 he disagreed with their findings.

16 Q Did you put it to him that way,
17 what's the deal with this nonsense?

18 A Yeah.

19 Q What was his reaction? What
20 did he say to you?

21 A He doesn't agree with their
22 opinion.

23 Q Is that what he said, I don't
24 agree with their opinion?

25 A Yes.

1 K. J. McCready 408

2 Q That's all he said?

3 A Yeah.

4 Q Which opinion; that there was a
5 knife print or that the knife print didn't
6 match any of the knives in the house?

7 A I didn't get into a lengthy
8 discussion about it, all right. I just
9 mentioned it to him and that's what he said
10 to me.

11 Q Well, even before you spoke to
12 Mr. Genna, you described it as nonsense?

13 A Right.

14 Q Why?

15 A Because I felt like they were
16 making things up up there.

17 Q You thought that the State
18 police were making things up?

19 A Yeah.

20 Q This kind of reminds me of our
21 conversation yesterday where you said --

22 MR. DUNNE: Can we just ask a
23 question. I object to the colloquy.

24 MR. BARKET: Sure.

25 Q You recall yesterday saying

1 K. J. McCready 409

2 that no evidence would ever change your view
3 that Marty killed his parents?

4 A That's right.

5 Q So that any evidence that
6 indicates he's innocent has to be nonsense?

7 MR. DUNNE: I object to the
8 characterization in the question.
9 That's not what he said.

10 A That's not what I said.

11 MR. DUNNE: Go ahead and answer
12 that.

13 Q Would you agree with me that if
14 the knife print was there and it was
15 inconsistent with every knife in the house,
16 meaning the knife that was used had to be
17 taken out of the house, that that would be
18 some evidence that somebody else was
19 involved in this besides Martin Tankleff?

20 MR. DUNNE: I'll object to the
21 form of the question. Go ahead,
22 Detective.

23 A No. To me, what that would
24 mean, if there was another knife involved,
25 that he disposed of the knife somewhere, not

1 K. J. McCready 410

2 that somebody else took it out of the house.

3 Q In the 30 minutes that he had
4 from 5:35 to 6:11, 36 minutes, we now add in
5 that he somehow disposed of the knife in a
6 way that it was never found?

7 A I'm not saying he disposed of
8 the knife.

9 MR. DUNNE: Jimmy, hold on a
10 second. I have to object to the
11 suppositions in that question but
12 you answered that question as he
13 posed it.

14 A What I'm saying is that
15 anything is possible. I still, as I pointed
16 out many times today, I still don't believe
17 that he gave us a hundred percent of the
18 truth about this whole thing so that could
19 be one of the things. It would have been
20 nice if we had found a knife outside if
21 that, in fact, was a murder weapon or
22 something.

23 Q Did you even consider the
24 possibility? I mean just kind of
25 objectively just step back a second.

1 K. J. McCready 411

2 MR. DUNNE: Again, I'm going to
3 object to the characterization and
4 the colloquy.

5 MR. BARKET: Let me finish my
6 question and you can object to it.

7 Q Did you even consider the
8 possibility? I mean you're a human, Rein is
9 human, everybody makes mistakes, that you
10 just made a mistake here? Do you consider
11 that possible?

12 A I didn't do --

13 MR. DUNNE: I need to put my
14 objection to the form of the
15 question on record. Go ahead.

16 A I didn't make any mistakes.

17 Q I didn't ask you if you did or
18 didn't. I got the fact that you don't think
19 you did. What I'm asking you is, did you
20 even consider that maybe you got this wrong?

21 A Consider what?

22 Q That Marty is innocent.

23 A No, he's not innocent.

24 Q It never, in your wildest
25 dreams, creeping conscious anywhere, thought

1 K. J. McCready 412

2 Jeeze, with all this other evidence, all
3 these other things, that maybe, you know, we
4 made a mistake here?

5 MR. DUNNE: I'll object to the
6 form of the question. Go ahead,
7 Detective, and answer that.

8 A Absolutely not. He's as guilty
9 today as he was then.

10 Q Or as not guilty today as he
11 was then depending on our view, right?

12 MR. DUNNE: Counsel, you know
13 the parameters. You know better.

14 Q Am I right about that?
15 Whatever happened back then happened?

16 A He did it.

17 Q You weren't there; I wasn't
18 there.

19 A But he did it. You know, when
20 I get up in the morning I shave my face.
21 When I look at the guy in the mirror on that
22 side, I like that guy. I don't know if he
23 could do the same thing.

24 Q Well, you know, I guess we can
25 ask him when it's his turn, right?

1 K. J. McCready 413

2 MR. DUNNE: I've concluded that
3 examination.

4 Q You're comfortable with the
5 work you did here?

6 A Yes.

7 Q You think you put a guilty
8 person in prison?

9 A Yes.

10 Q And that, if anything -- Did
11 you make any mistakes in this investigation?

12 A I don't know. I don't know. I
13 don't know. Not that I can think of right
14 now.

15 Q Did you ever -- You gave some
16 interviews to a number of media outlets.
17 Did you tell Erin Moriarty that you were
18 better than a polygraph at detecting when
19 people lie?

20 A No, I told her -- I said I
21 would like to think that I was better than a
22 polygraph.

23 Q Kind of the same thing, right?

24 MR. DUNNE: Well, Counsel, come
25 on. That's the answer.

1 K. J. McCready 414

2 Q Why would you like to think
3 that you're better than a polygraph at
4 determining whether individuals are lying?

5 A Because I think I am. And a
6 polygraph you can't use it in a criminal
7 case. It's not reliable.

8 Q Is that why you didn't give
9 Marty one?

10 A No.

11 Q When Steuerman fled to
12 California, did you go out --

13 A Yes.

14 Q -- to bring him back. Why did
15 you go out there?

16 A Out to Steuerman?

17 Q Yeah, why did you go get him?

18 A Because he faked his own death
19 and all that stuff.

20 Q So what?

21 A And he's a witness in this
22 case.

23 Q So who else went with you?

24 A Detective Sergeant Doyle and Ed
25 Jabloski, assistant district attorney.

1 K. J. McCready 415

2 Q How long were you in California
3 for?

4 A I don't remember. I'm thinking
5 three, four to five days.

6 Q And the purpose was to bring
7 Mr. Steuerman back?

8 A Yes.

9 Q I mean this wasn't about the
10 time of the trial, this was much closer to
11 the time of the murders, right?

12 A Yes, it was right after the
13 murder.

14 Q In fact, Mr. Tankleff was still
15 in a coma in the hospital alive, right?

16 A Yes, yes.

17 Q I don't suppose you said to Mr.
18 Steuerman when you saw him that Seymour was
19 pumped full of adrenalin, came out of his
20 coma, and said that Steuerman attacked him;
21 did you?

22 A Did I say that?

23 MR. DUNNE: I object to the
24 form of the question.

25 A No, I didn't say that.

K. J. McCready

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Q I guess that I've heard you comment that Steuerman wasn't a suspect, was never a suspect, and that he just made your case more difficult by fleeing; is that right?

A Yes.

Q So the information that has come to light about Steuerman since the murders does not cause you to question whether or not he was a suspect or perhaps actually involved, it simply makes the prosecution or made the prosecution of Marty more difficult for you?

MR. DUNNE: I'll object to the form of the question. Go ahead and answer that.

A No, I don't think it made it that more difficult for us. I think it just brought a lot of grief and aggravation onto Steuerman himself because he did pull that act.

Q Okay.

(Continued on next page to include jurat.)

K. J. McCready

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MR. BARKET: Thank you. I
appreciate your time.

THE WITNESS: You're quite
welcome.

THE VIDEOGRAPHER: It's 3:24.
This concludes the day's deposition.
We're off record at 3:24 p.m.

(Time noted: 3:24 p.m.)

K. JAMES McCREADY

Subscribed and sworn to before me
this ____ day of _____, 2013.

NOTARY PUBLIC

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ERRATA SHEET FOR THE TRANSCRIPT OF:
Case Name: Martin Tankleff vs The County of
Suffolk
Deposition Date: December 12, 2012
Witness: K. James McCready

CORRECTIONS

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Signature

Subscribed and sworn to before me
this _____ day of _____, 2013.

(NOTARY PUBLIC)

CERTIFICATION

I, DOLLY FEVOLA, a Notary Public in
and for the State of New York, do hereby certify:

THAT the witness whose testimony is herein
before set forth, was duly sworn by me; and

THAT the within transcript is a true record
of the testimony given by said witness.

I further certify that I am not related,
either by blood or marriage, to any of the parties
to this action; and

THAT I am in no way interested in
the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 30th day of January, 2013.

A handwritten signature in cursive script, reading "Dolly Fevola", written over a horizontal line.

DOLLY FEVOLA

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MARTIN THANKS being duly sworn
deposes and says that I am 17 years
old having been born on August 29th,
1971 in Brooklyn N.Y. I live at #33
Seaside Drive Belle Terre, I'm a
senior in Port Jeff High School.
I have been advised of my rights
as follows,
I know that I have the right to
remain silent.
I know that anything I say can and
will be used against me in a court of
law. I know that I have the
right to have an attorney present
before or during any questioning
I know that if I cannot afford to hire
an attorney one will be furnished for
me free of charge.
I understand each of the rights
Detective McCreary has explained
to me. I do not want to
contact an attorney. Having
my rights in mind I want to tell
Detectives McCreary and Reid what
happened to my parents this morning.
Yesterday I went to the
mall shopping. I was supposed to be

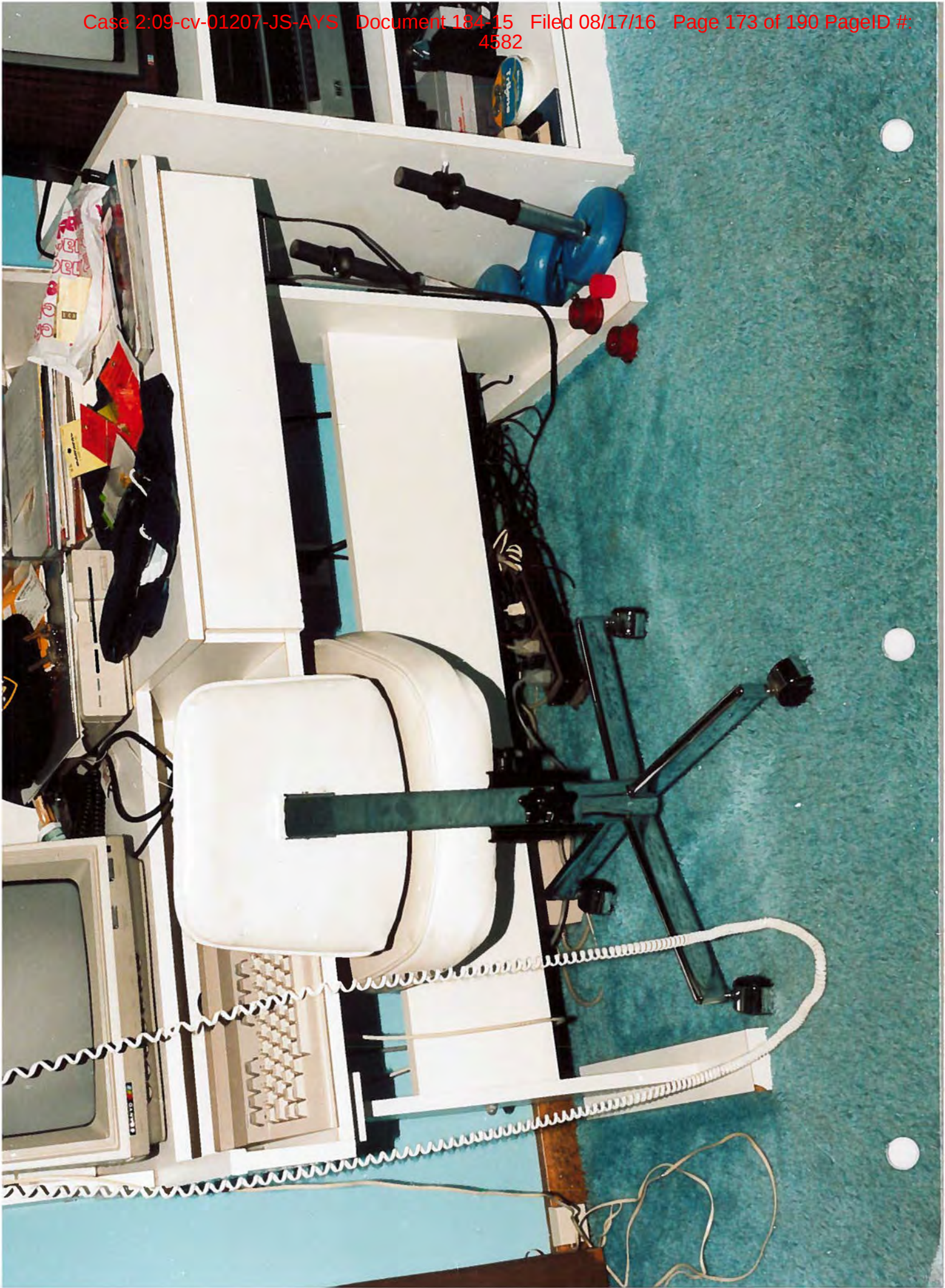


9/7/88

home early enough to set up the (Car) table for my father and his friends. When I got home about 9:10 pm my mother was mad at me because I didn't do it. My father punished me mostly but my mother had been siding with my father lately. I was angry because my father's partner Dan Hays was going to stay with me when they went to Florida in October. They ruined my summer by not letting me use the boat as much as I wanted. They wanted me to drive the Cummy old divedor. They were fighting alot and taking it out on me. When my mother sided with my father about the Card table I was really mad. I decided I wanted to kill Dan Hays. I set my alarm for 5:35 to wake sure I would be up before then. I decided to use the Baseball when I went to bed. When I got up I was surprised to see ~~the~~ the lights still on. When I looked in my parents room my mother was there. She was sleeping. I went down to the office and saw my father sleeping in the chair. I decided to kill my mother first. I ran across the bed. I got to her quick.

1322 D/Sgt Horvath states
ATTY Myron Fox Called - Nothing further

I hit her 4 or 5 times on the
head. She fought me. I went to
the kitchen and got a knife. I
ran back with the knife. I cut
her throat. I don't know how
many times but I stabbed at
her also. Mostly I cut at her
throat and neck. I left to







**PLAINTIFF'S
EXHIBIT**

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DF 12/12/12











PLAINTIFF'S
EXHIBIT
101
OF 9 12/12/12











PLAINTIFF'S
EXHIBIT
104
DF 12/12/12



